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# Executive Orders

## EXECUTIVE ORDER MJF 03-03

Additional 2002 Carry-Forward Bond Allocation  
Louisiana Housing Finance Agency

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act No. 51 of the 1986 Regular Session of the Louisiana Legislature (collectively hereafter "the Act"), Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, (hereafter collectively "MJF 96-25") was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2002 (hereafter "the 2002 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2002 Ceiling; and

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

WHEREAS, subsection 4.8 of MJF 96-25 provides that if the ceiling for a calendar year exceeds the aggregate amount of bonds subject to the private activity bond volume limit issued during the year by all issuers, by executive order, the governor may allocate the excess amount to issuers or an issuer for use as a carry-forward for one or more carry-forward projects permitted under the Act;

WHEREAS, on December 30, 2002, Executive Order No. MJF 2002-74 was issued to carry-forward one hundred thirty-five million three hundred sixty-six thousand two hundred sixteen dollars and three cents (\$135,366,216.03) of the 2002 Ceiling which was unused and returned; however, the Order did not reflect the allocation and portion of the allocation returned unused from Executive Order Nos. MJF 2002-54 and 2002-57;

WHEREAS, Executive Order No. MJF 2002-54, issued on October 25, 2002, allocated three million two hundred thousand dollars (\$3,200,000) from the 2002 Ceiling to the Lafayette Economic Development Authority in connection with a Tube-Alloy Corporation project, but two hundred ninety-seven thousand two hundred fifty dollars (\$297,250) of the three million two hundred thousand dollar (\$3,200,000) allocation was returned unused;

WHEREAS, Executive Order No. MJF 2002-57, issued on November 6, 2002, allocated five million dollars (\$5,000,000) from the 2002 Ceiling to the Parish of DeSoto, State of Louisiana, in connection with an International Paper Company project, but the five million dollar (\$5,000,000) allocation was returned unused; and

WHEREAS, the governor desires to allocate the additional unused portion of the 2002 Ceiling as a carry-forward for a project which is permitted and eligible under the Act;

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: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, as amended, and in accordance with the request for a carry-forward filed by the designated issuer, the excess and/or unissued private activity bond volume limit under the 2002 Ceiling is hereby allocated to the following issuer, for the following carry-forward project, and in the following amount.

Issuer	Carry Forward Amount	Carry Forward Project
Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bond Program	\$5,297,250

SECTION 2: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 3: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 13th day of February, 2003.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0303#001

## EXECUTIVE ORDER MJF 03-04

Executive Branch Expenditure Freeze

WHEREAS, pursuant to the provisions of Article IV, Section 5 of the Louisiana Constitution of 1974, as amended, and Act No. 13 of the 2002 Regular Session of the Louisiana Legislature, the governor issued Executive Order No. MJF 2002-29 on September 24, 2002, ordering an expenditure freeze throughout the executive branch of state government to achieve a state general fund savings of at least seventy-five million dollars (\$75,000,000) for the remainder of the 2002-2003 fiscal year;

WHEREAS, Executive Order No. MJF 2002-29 was issued as a prudent money management practice but not as a response measure to a projected budget deficit; consequently, the total estimated dollar savings of the

expenditure freeze is not deducted from appropriations on the budget status report like the appropriations cuts ordered this day in Executive Order No. MJF 2003-4 under the authority of R.S. 39:75(C)(1)(a); and

WHEREAS, prudent money management practices dictate that the best interests of the citizens of the state of Louisiana will be served by continuing the expenditure freeze ordered in Executive Order No. MJF 2002-29, but decreasing its estimated dollar savings in conjunction with the appropriations cuts ordered in Executive Order No. MJF 2003-4 and other considerations, to achieve a state general fund savings of at least fifty-four million six hundred thirty-eight thousand six hundred ninety-seven dollars (\$54,638,697) for the remainder of the 2002-2003 fiscal year;

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 of the executive branch of the state of Louisiana, as described in and/or funded by appropriations through Act. No. 13 of the 2002 Regular Session of the Louisiana Legislature (hereafter "Act No. 13"), (hereafter "Unit" and/or "Units") shall reduce expenditure of funds appropriated to the Unit from the state general fund by Act No. 13, in the amounts shown below:

<b>Executive Department</b>	<b>State General Fund</b>
Schedule 01	\$ 2,725,064
Secretary of State Budget Unit 04-139	\$ 154,996
Office of the Attorney General Budget Unit 04-141	\$ 487,965
Commissioner of Elections Budget Unit 04-144	\$ 204,883
Lieutenant Governor Budget Unit 04-146	\$ 16,679
State Treasurer Budget Unit 04-147	\$ 53,805
Department of Agriculture and Forestry Budget Unit 04-160	\$ 1,226,088
Department of Culture, Recreation and Tourism Schedule 06	\$ 1,663,320
Department of Transportation and Development Schedule 07	\$ 61,784
Department of Public Safety and Corrections Corrections Services All Corrections Services Budget Units in Schedule 08	\$ 3,324,709
Department of Health and Hospitals Schedule 09	\$ 36,101,431
Department of Social Services Schedule 10	\$ 1,269,447

Department of Natural Resources Schedule 11	\$ 352,861
Department of Revenue Schedule 12	\$ 124,271
Department of Labor Schedule 14	\$ 139,639
Department of Civil Service Schedule 17	\$ 19,822
Department of Education All Department of Education Budget Units in Schedule 19 (except 19-695 and 19-699)	\$ 6,037,441
Louisiana State University Health Science Center Health Care Services Division Budget Unit 19-610	\$ 21,075
Other Requirements Schedule 20	\$ 653,418

SECTION 2:

A. No later than March 5, 2003, the head of each Unit listed in Section 1 of this Order shall submit to the commission of administration (hereafter "commissioner") a supplemental 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 expenditure freeze ordered in Section 1 of this Order (hereafter "supplemental mid-year budget adjustment plan"), and a description of the methodology used to formulate the supplemental mid-year budget adjustment plan.

B. In the event that positions of employment will be affected by the supplemental mid-year budget adjustment plan, the description of the methodology used to formulate the supplemental mid-year budget adjustment plan shall include, at a minimum, the following information for each position of employment proposed to be affected:

1. The type of position of employment to be affected, 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. An explanation of why the position of employment is being selected for inclusion in the Unit's supplemental mid-year budget adjustment plan.

C. No Unit shall implement the expenditure freeze ordered in Section 1 of this Order without the commissioner's prior written approval of the Unit's supplemental mid-year budget adjustment plan.

D. Once approved, a supplemental mid-year budget adjustment plan may not be changed without the commissioner's prior written approval.

SECTION 3: If full or partial implementation of the expenditure freeze mandated in Section 1 of this Order will prevent a statewide elected official from being able to perform and/or fulfill his or her constitutional functions and/or duties, the commissioner is authorized to grant the statewide elected official an exemption from Section 1 to the extent necessary.

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

SECTION 5: Executive Order No. 2002-29, issued on September 24, 2002, is hereby rescinded and terminated.

SECTION 6: 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 with the Office in implementing the provisions of this Order.

SECTION 7: This Order is effective upon signature and shall remain in effect through June 30, 2003, 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 21st day of February, 2003.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0303#007

**EXECUTIVE ORDER MJF 03-05**

Executive Branch Appropriations Cuts

WHEREAS, R.S. 39:75(A)(1) directs the Division of Administration to submit a monthly budget status report to the Joint Legislative Committee on the Budget (hereafter "Committee") indicating the balance of the budget for the state general fund and dedicated funds by comparing the official forecast for these funds to the total authorized appropriations from each fund; once approved by the Committee, the most recent budget status report becomes the official budget status of the state;

WHEREAS, if the most recently approved budget status report indicates that the total appropriation from any fund will exceed the official forecast for that fund, R.S. 39:75(B) mandates the Committee shall immediately notify the governor that a projected deficit exists for that fund;

WHEREAS, by letter dated January 22, 2003, received on January 24, 2003, the Committee notified the governor that it approved a budget status report at its January 17, 2003 meeting indicating a projected deficit of eighteen million five hundred eighty-one thousand dollars (\$18,581,000) exists in the state general fund for fiscal year 2002-2003 based on the revised revenue forecast adopted by the Revenue Estimating Conference on January 16, 2003;

WHEREAS, once notified that a projected deficit exists, under R.S. 39:75(C) and Section 8 of Act No. 13 of the 2002 Regular Session of the Louisiana Legislature, the governor has interim budget balancing powers, and may reduce appropriations for the executive branch of government for any program that is appropriated from a fund that is in deficit posture in accordance with R.S. 39:75(C)(1)(a); and

WHEREAS, if within thirty (30) days of the determination of the existence of a projected deficit, the governor does not make necessary adjustments in the appropriations to eliminate the projected deficit, R.S. 39:75(D) mandates the governor shall call a special session of the Louisiana Legislature for that purpose;

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: Appropriations to the following departments, agencies, and/or budget units of the executive branch of the state of Louisiana, described in and/or funded by appropriations from the state general fund through Act No. 13 of 2002 Regular Session of the Louisiana Legislature, (hereafter "Unit" and/or "Units") shall be reduced pursuant to R.S. 39:75(C)(1)(a) in the amounts shown below (hereafter "appropriations cuts") in order to eliminate the projected deficit by adjusting authorized appropriations from the state general fund by eighteen million five hundred eighty-one thousand dollars (\$18,581,000).

Executive Department	State General Fund
Schedule 01	\$ 926,714
Secretary of State Budget Unit 04-139	\$ 52,709
Office of the Attorney General Budget Unit 04-141	\$ 165,943
Commissioner of Elections Budget Unit 04-144	\$ 69,674
Lieutenant Governor Budget Unit 04-146	\$ 5,672
State Treasurer Budget Unit 04-147	\$ 18,298
Agriculture and Forestry Budget Unit 04-160	\$ 416,956
Department of Culture, Recreation and Tourism Schedule 06	\$ 565,646
Department of Transportation and Development Schedule 07	\$ 21,011
Department of Public Safety and Corrections Corrections Services	
All Corrections Services Budget Units in Schedule 08	\$ 1,130,635
Department of Health and Hospitals Schedule 09	\$ 12,277,026
Department of Social Services Schedule 10	\$ 431,701
Department of Natural Resources Schedule 11	\$ 119,997
Department of Revenue	

Schedule 12	\$ 42,261
Department of Labor Schedule 14	\$ 47,487
Department of Civil Service Schedule 17	\$ 6,741
Department of Education All Department of Education Budget Units in Schedule 19 (except 19-695 and 19-699)	\$ 2,053,154
Louisiana State University Health Science Center Health Care Services Division Budget Unit 19-610	\$ 7,167
Other Requirements Schedule 20	\$ 222,208

**SECTION 2:**

A. No later than March 5, 2003, the head of each Unit listed in Section 1 of this Order shall submit to the commissioner of administration (hereafter "commissioner") a supplemental 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 appropriations cuts ordered in Section 1 of this Order (hereafter "supplemental mid-year budget adjustment plan"), and a description of the methodology used to formulate the supplemental mid-year budget adjustment plan.

B. In the event that positions of employment will be affected by the supplemental mid-year budget adjustment plan, the description of the methodology used to formulate the supplemental mid-year budget adjustment plan shall include, at a minimum, the following information for each position of employment proposed to be affected:

1. The type of position of employment to be affected, 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. An explanation of why the position of employment is being selected for inclusion in the Unit's supplemental mid-year budget adjustment plan.

C. No Unit shall implement the appropriations cuts ordered in Section 1 of this Order without the commissioner's prior written approval of the Unit's supplemental mid-year budget adjustment plan.

D. Once approved, a supplemental mid-year budget adjustment plan may not be changed without the commissioner's prior written approval.

SECTION 3: The commissioner is authorized to develop additional guidelines as necessary to facilitate the administration of this Order.

SECTION 4: 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 5: This Order is effective upon signature.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 21st day of February, 2003.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
0303#008

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Division of Pesticides and Environmental Programs

#### Pesticide Restrictions Use of the Pesticide Icon (LAC 7:XXIII.143)

In accordance with the Administrative Procedures Act R.S. 49:953(B) and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following Rules for the implementation of regulations governing the use of the pesticide, Icon (fipronil).

Icon is an essential pesticide in the control of rice pests. Without its use the rice crop in Louisiana is in imminent danger of being damaged by pests, to the extent that a substantial reduction in rice yield will result. Failure to control rice pests, therefore, poses an imminent peril to the economy of the State of Louisiana and to the rice growing parishes of Louisiana. The cumulative effect of Icon as a pesticide, saltwater intrusion, anticipated high water temperatures, and other weather related factors pose an imminent peril to the environment and to the economy of the State of Louisiana and to the rice growing parishes of Louisiana. The application of Icon in accordance with its label and labeling, but inconsistent with the department's rules and regulation and the potential misuse of this pesticide poses an imminent peril to the public health, safety and welfare and to the environment, especially if it gets into the waterways of this state.

The department has, therefore, determined that these emergency rules implementing a monitoring and registration program and governing Icon applications, during the current crop year, are necessary in order to alleviate these perils. Information will be gathered to determine whether the effectiveness of this chemical outweighs any potential risk to the public or the environment.

This Rule becomes effective upon signature, March 7, 2003, and will remain in effect 120 days.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticide

#### Chapter 1. Advisory Commission on Pesticides

#### Subchapter I. Regulations Governing Application of Pesticides

#### §143. Restrictions on Application of Certain Pesticides

A. - M.2. ...

N. Persons applying Icon to rice seed and persons selling or planting Icon treated rice seed, intended to be planted in Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Jefferson Davis, Lafayette, St. Landry, St. Martin, St. Mary, and Vermillion parishes shall comply with the following.

#### 1. Registration Requirements

a. The commissioner hereby declares that prior to making any application of Icon to rice seed, the seed treatment owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. The commissioner hereby declares that prior to selling Icon treated rice seed, the dealer must first register such intent by notifying the DPEP in writing.

c. The Commissioner hereby declares that prior to making aerial applications of Icon treated rice seed, the aerial owner-operator must first register such intent by notifying the DPEP in writing.

2. Growers of rice shall not force or coerce applicators to apply Icon treated rice, when the applicators, conforming to the Louisiana Pesticide Laws and Rules and Regulations or to the pesticide label and labeling, deem it unsafe to make such applications. Growers found to be in violation of this section shall forfeit their right to use Icon treated rice seed, subject to appeal to the Advisory Commission on Pesticides.

#### 3. Icon Application Restriction

a. Do not apply Icon treated rice seed by ground within 25 feet, or by air within 100 feet of lakes, reservoirs, rivers, permanent streams, marshes or natural ponds, estuaries and commercial fish farm ponds.

b. Do not allow Icon treated rice seed to drift into neighboring fields, ponds, streams or estuaries with fish, shellfish, or crustaceans (including crawfish).

c. All Icon label and labeling use restrictions shall be strictly followed.

#### 4. Monitoring of Icon

a. Rice seed treaters, registered to treat rice seed with Icon, shall report daily to the DPEP, on forms prescribed by the commissioner, all treatments of Icon to rice seed. Information shall include but not be limited to:

- i. pounds treated;
- ii. treatment rate;
- iii. pounds sold or distributed;
- iv. purchaser and/or grower name, address, and phone number.

b. Dealers selling Icon treated rice seed shall report daily, to the DPEP, on forms prescribed by the commissioner all sales of Icon treated rice seed. Information shall include but not be limited to:

- i. pounds sold;
- ii. treatment rate;
- iii. acres to be planted,;
- iv. planting date;
- v. purchaser and/or grower name, address, parish and phone number;
- vi. location and parish of field to be planted;
- vii. planting applicator-owner/operator (aerial or ground).

c. Aerial owner/operators planting Icon treated rice seed shall provide and maintain records daily, on forms



prescribed by the commissioner all applications of Icon treated rice seed. Information shall include but not be limited to:

- i. pounds per acre planted;
- ii. acres planted;
- iii. date planted;
- iv. grower name, address, parish and phone number;
- v. location and parish of field planted;
- vi. pilot's name and certification number.

5. Upon determination by the commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists, he may consider:

- a. stop orders for use, sales, or application;
- b. label changes;
- c. remedial or protective orders;
- d. any other relevant remedies.

O. - P.6.a.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:791 (June 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 29:

Bob Odom  
Commissioner

0303#026

### DECLARATION OF EMERGENCY

#### Department of Economic Development Workforce Development and Training Program Office of Business Development

Louisiana Economic Development Corporation  
Workforce Development and Training Program  
(LAC 13:III.Chapter 3)

The Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend rules of the Louisiana Workforce Development and Training Program. This Emergency Rule was adopted on February 13, 2003, to become effective February 13, 2003. This Emergency Rule shall remain in effect for a period of 120 days or until a final Rule is promulgated, whichever occurs first.

The Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), in order to publish these Rules because of recent statutory amendments and a recognized immediate need to remove the requirement that a sponsoring public entity be a party to the award agreement or contract, and for the Louisiana Economic Development Corporation be a party to the award agreement

or contract. The contract will now be between the corporation and the company being granted the Award.

The emergency action is deemed necessary to remove the inherent conflict of interest in having a public entity monitor the performance of the company under the contract. Public entities need to work closely with these companies to enhance job opportunities in their respective areas.

### Title 13

### ECONOMIC DEVELOPMENT

### Part III. Financial Assistance Programs

### Chapter 3. Workforce Development and Training Program

#### §301. Preamble and Purpose

A. Workforce Development and Training is vital to support the State's commitment to Cluster Based Economic Development, and the State's long-term goals as set forth in Louisiana: Vision 2020, which is the Master Plan for Economic Development for the State of Louisiana.

B. The purpose of the program is to enable the development of and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

- 1. improving the competitiveness and productivity of Louisiana's workforce and business community; and
- 2. assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

#### §303. Definitions

*Applicant* Cthe entity or company requesting a training award from LED and LEDC under this program.

*Award* Cfunding approved under this program for eligible training activities.

*Company* Cthe business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

*Contract* Ca legally enforceable Award Agreement between DED, the awardee and a sponsoring entity LEDC and the successful applicant-company governing the terms and the conditions of the training award.

*Full Time Permanent Job* Can employed position requiring the employee to work a full 40 hour work week, and which is not a temporary position.

*LEDC* the Louisiana Department of Economic Development.

*LEDCC* the Louisiana Economic Development Corporation.

*Net Benefit Return to the State* Cthe determination of whether or not the value to the State is equal to or exceeds the amount of the award to the company.

*Percentage of Achieved Performance Objectives as Provided in the Contract* Can average of that portion achieved by the company of the full time permanent jobs created or upgraded, and that portion achieved by the

company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

**Preference**—the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

**Program**—the Workforce Development and Training Program.

**Project**—the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to maintain or expand its Louisiana operations, to increase its capital investment in Louisiana, or to locate a facility in this State.

**Secretary**—the Secretary of the Louisiana Department of Economic Development, who is, by law, also the President of the Louisiana Economic Development Corporation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### **§305. General Principles**

A. The following general principles will direct the administration of the Workforce Development and Training Program:

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;
2. training awards are not to be construed as an entitlement for companies located or locating in Louisiana;
3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;
4. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;
5. evaluations for the enhancement of existing Louisiana businesses that are adding locations within the state will be conducted with the same procedures and with the same priority as the recruitment of new businesses to the state;
6. the anticipated economic benefits to the state will be considered as a requirement in making the award;
7. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate;
8. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers; and
9. award funds shall be utilized for the approved training project only.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### **§307. Program Descriptions**

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;
2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### **§309. Eligibility**

A. An eligible applicant is an employer that seeks customized training services to provide training in a particular industry.

B. The following types of businesses are ineligible for the award of workforce development funds:

1. retail businesses;
2. trucking companies;
3. lodging or hospitality enterprises;
4. assisted living enterprises, retirement communities, or nursing homes; and
5. gaming or gambling enterprises.

C. Employees to be trained must be employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained for projects at Stennis Space Center must be Louisiana residents.

D. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with the Department of Economic Development or LEDC in which the company is in default and/or is not in compliance.

E. Companies must be in full compliance with all state and federal laws.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR

23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### §311. Criteria

A. General (these apply to all training programs administered under these rules)

1. Preference may be given to applicants in industries identified by the state as targeted or cluster industries, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 365 days of application approval, the LEDC, upon the recommendation of the Secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the contract.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must create at least 10 net new full-time permanent jobs in the state, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 full-time permanent employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### §313. Application Procedure

A. LED will provide a standard application form which applicants will use to apply for assistance. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information LED or LEDC may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664

(September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### §315. Submission and Review Procedure

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed, in order to:

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;

2. identify the availability of existing training programs which could be adapted to meet the employer's needs;

3. verify that the business will continue to operate during the period of the contract; and

4. determine if the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The net benefit return to the state shall not exceed two years.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to LEDC; and LEDC will then review and either approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### §317. General Award Provisions

A. Award Agreement

1. An award agreement or contract will be executed between LEDC and the successful applicant-company. The contract will specify the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation, and the achievement of employee salary levels to be reached by the company.

2. LEDC will disburse funds to the company as provided by the award agreement or contract.

3. LED will oversee the progress of the training and reimburse the company on the basis of cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting information.

4. Funds may be used for training programs extending up to two years in duration.

5. Contracts issued under previous rules may be amended to reflect current regulations as of the date of the

most recent change, upon request of the company, the recommendation of LED, and approval of LEDC.

#### B. Funding

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. travel costs: travel for trainers, training coordinators and trainees;

c. materials and supplies costs: training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and computer based training (CBT) software; and

d. other costs: when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. non-consumable tangible property [e.g., equipment, calculators, furniture, classroom fixtures, non-computer based training (CBT) software], unless owned by a public training provider;

c. out-of-state, publicly supported schools;

d. employee handbooks;

e. scrap produced during training;

f. food, refreshments; and

g. awards.

4. Training activities eligible for funding consist of:

a. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

b. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

#### C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to LED by the company. Funds will not be available for reimbursement until a training agreement or contract between the company and LEDC has been executed. Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, reimbursements can be provided to the company only after final execution of a contract with LEDC.

2. Companies will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the

benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

#### D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, companies shall be required to complete and submit to LED Cost Reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly Dept. of Labor ES-4 Form filings to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company fails to meet its performance objectives specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the company in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED and on the recommendation of the secretary. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits of the training project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

4. In the event a company knowingly files a false statement in its application or in a progress report, the company may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133.

5. LEDC shall retain the right, for itself, for the Legislative Auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

#### §319. Contract Monitoring

A. All monitoring will be done by LED. A portion of the fiscal year's appropriation, up to five percent or a maximum

of \$200,000.00, may be used by LED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:

### §321. Conflicts of Interest

A. No member of Louisiana Economic Development Corporation (LEDC), employee thereof, or employee of the Louisiana Department of Economic Development (LED), nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:

Don J. Hutchinson  
Secretary

0302#002

## DECLARATION OF EMERGENCY

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

Scholarship/Grant Programs  
(LAC 28:IV.301, 701, 805, 1703, and 1705)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the Rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating Rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective February 7, 2003, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

## Title 28 EDUCATION

### Part IV. Student Financial Assistance Higher Education Scholarship and Grant Programs Chapter 3. Definitions §301. Definitions

\* \* \*

*Program Year (Non-Academic Program)* Cthe schedule of semesters or terms during a year leading to a vocational or technical education certificate or diploma or a non-academic undergraduate degree for such programs offered by eligible colleges and universities, beginning with the fall semester or term, including the winter term, if applicable, and concluding with the spring semester or term or the equivalent schedule at an institution which operates on units other than semesters or terms. Enrollment in a summer term, semester or session is not required to maintain eligibility for an award.

*Qualified Summer Session* Cthose summer sessions for which the student's institution certifies that:

1. the summer session is required in the student's degree program for graduation and the student enrolled for at least the minimum number of hours required for the degree program for the session; or
2. the student can complete his program's graduation requirements in the summer session; or
3. the course(s) taken during the summer session is required for graduation in the program in which the student is enrolled and is only offered during the summer session; or
4. the course(s) taken during the summer session is in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29: LR 29:

### Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

#### §701. General Provisions

A. - E.1. ...

2. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each Academic Year (College) and Program Year (Non-academic Program), in addition to an amount equal to tuition for full-time attendance at an Eligible College or University, for a period not to exceed eight semesters, including Qualified Summer Sessions, 12 quarters, including Qualified Summer Sessions, or an equivalent number of units in an eligible institution which

operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each Qualified Summer Session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a Qualified Summer Session for which tuition is paid will count toward the eight semester limit for TOPS.

3. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each Academic Year (College) and each Program Year (Non-academic Program), in addition to an amount equal to tuition for full-time attendance at an Eligible College or University, for a period not to exceed eight semesters, including Qualified Summer Sessions, twelve quarters, including Qualified Summer Sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each Qualified Summer Session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a Qualified Summer Session for which tuition is paid will count toward the eight semester limit for TOPS.

E.4. - 5.a. ...

b. In a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree receive an amount equal to the Average Award Amount (TOPS-Tech), as defined in §301, plus any applicable stipend, prorated by two semesters, three quarters, or equivalent units in each Program Year (Non-academic Program). The stipend will be paid for each Qualified Summer Session, semester, quarter, term or equivalent unit for which tuition is paid. Attending a Qualified Summer Session for which tuition is paid will count toward the eight semester limit for TOPS.

E.6. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25:256 (February 1999) LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:

## **Chapter 8. TOPS-TECH Award**

### **§805. Maintaining Eligibility**

A.-A.4. ...

5. continue to enroll and accept the TECH award as a full-time student in an eligible college or university defined in §301, and maintain an enrolled status throughout the Program Year (Non-Academic Program), unless granted an exception for cause by LASFAC; and

A.6. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:

## **Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools**

### **§1703. High School's Certification of Student Achievement**

A. Responsibility for Reporting and Certifying Student Performance

1. Through the 2002 Academic Year (High School), responsibility for the identification and certification of high school graduates who meet the academic qualifications for a TOPS award is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

2. Commencing with the 2003 Academic Year (High School), responsibility for the submission and certification of courses attempted and the grades earned for high school graduates is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

3. The Louisiana Department of Education shall certify to LASFAC the names of students who are enrolled in and have completed all mandatory requirements through the twelfth grade level of a state-approved home study program.

B. Procedures for Reporting and Certifying Student Performance

1.a. Through the 2002 Academic Year (High School), the responsible high school authority shall record student performance on the form provided by LASFAC or in an electronic format pre-approved by LASFAC. The certification form shall be completed, certified and returned to LASFAC by the deadline specified on the form.

b. Commencing with the 2003 Academic Year (High School), the responsible high school authority shall submit the required student information in a standard electronic format approved by LASFAC.

2.a. Through the 2002 Academic Year (High School), the certification form shall contain, but is not limited to, the following reportable data elements:

$$5X = 12; X = 2.40$$

i. student's name, address, phone number and social security number;

ii. month and year of high school graduation;

iii. final cumulative high school grade point average for all courses attempted, converted to a maximum 4.00 scale, if applicable (Note: Beginning with students graduating in 2002-2003, the cumulative high school grade point average will be calculated by using only grades obtained in completing the core curriculum.); and

iv. through the graduating class of the Academic Year (High School) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended;. After the graduating class of the Academic Year (High School) 2002-2003, core unit requirements may not be waived.

b. Commencing with the 2003 Academic Year (High School), certification shall contain, but is not limited to, the following reportable data elements:

i. student's name and social security number;

ii. month and year of high school graduation;

iii. the course code for each course completed;

iv. the grade for each course completed;

v. the grading scale for each course reported; and

vi. through the graduating class of the Academic Year (High School) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the Academic Year (High School) 2002-2003, core unit requirements may not be waived.

3. Through the 2002 Academic Year (High School), the responsible high school authority shall certify to LASFAC the final cumulative high school grade point average of each applicant and that average shall be inclusive of grades for all courses attempted and shall be computed and reported on a maximum 4.00 grading scale.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. (In this example, the school awards one extra quality point for an honors course.)

i. Example: an applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used.

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

4. Commencing with the 2003 Academic Year (High School), LASFAC shall determine whether high school graduates have completed the core curriculum and compute the TOPS Cumulative High School Grade Point Average for each such graduate using a maximum 4.00 grading scale. Grades awarded on other than a maximum 4.00 scale shall be converted to a maximum 4.00 scale.

C. Certifying 1998 Graduates for the TOPS Performance Award. 1998 Graduates who are ranked in the top 5 percent of their graduating class in accordance with §1703 shall be credited with having completed the core curriculum for purposes of the TOPS; however, only those meeting the following criteria shall be eligible for the Performance Award by LASFAC:

1. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

2. an ACT score of at least 23.

D. Certification.

1. Through the 2002 Academic Year (High School), the high school headmaster or principal or designee shall certify that:

a. all data supplied on the certification form are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

c. the school under the principal's jurisdiction shall reimburse LASFAC for the amount of a program award which was disbursed on behalf of a graduate of the school, when it is subsequently determined by audit that the school incorrectly certified the graduate.

2. Commencing with the 2003 Academic Year (High School), the submission of the required data by the high school headmaster or principal or designee shall constitute a certification that:

a. all data reported are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. Commencing with the 2003 Academic Year (High School), if a student is determined to be eligible for a TOPS Award based on data that is incorrect and the student was in fact ineligible for a TOPS Award or the level awarded, the high school must reimburse LASFAC for the amount paid in excess of what the student was eligible for.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR

24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26:1998 (September 2000), LR 26:2269 (October 2000), LR 27:1863 (November 2001), LR 29:

**§1705. Notification of Certified Students**

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS Performance and Honors Awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and to make the presentation awarding the endorsed certificates of achievement.

C.1. Through the 2002 Academic Year (High School), if the certifying authority elects to notify students of their certification, then the following disclaimer shall be included in any communication to the student: "Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program:

- a. you must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and
- b. you must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and
- c. you must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and
- d. you must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

2. Commencing with the 2003 Academic Year (High School), if the certifying authority elects to notify students of their potential eligibility for an award, then the following disclaimer shall be included in any communication to the student: "Although it appears that you have satisfied the academic requirements for a Tuition Opportunity Program for Students (TOPS) Award based on this school's review of the core curriculum courses you have completed and calculation of your TOPS Cumulative High School Grade Point Average, you must satisfy all of the following conditions to redeem a scholarship under this program:

- a. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;
- b. LASFAC must determine that your TOPS Cumulative High School Grade Point Average based on the TOPS core curriculum meets the statutory requirements;
- c. you must be a Louisiana resident as defined by LASFAC;
- d. you must be accepted for enrollment by an eligible Louisiana postsecondary institution and be registered as a full-time undergraduate student no later than the next semester following the first anniversary of your graduation from high school;
- e. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for consideration for state aid; and

f. you must have met all academic and nonacademic requirements and be officially notified of your award by LASFAC."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:644 (April 1998), amended LR 24:1913 (October 1998), repromulgated LR 27:1864 (November 2001), LR 29:

George Badge Eldredge  
General Counsel

0302#004

**DECLARATION OF EMERGENCY**

**Tuition Trust Authority  
Office of Student Financial Assistance**

START Interest Rates (LAC 28:VI.315)

The Louisiana Tuition Trust Authority (LATA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend Rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091-3099.2).

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance to effectively administer these programs. A delay in promulgating Rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The authority has, therefore, determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective February 7, 2003, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

**Title 28**

**EDUCATION**

**Part VI. Student Financial AssistanceC Higher  
Education Savings**

**Chapter 3. Education Savings Account**

**§315. Miscellaneous Provisions**

A. - B.6. ...

7. For the year ending December 31, 2002, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.82 percent.

8. For the year ending December 31, 2002, the Earnings Enhancements Fund earned an interest rate of 5.91 percent.

C. - R. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), amended LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:

George Badge Eldredge  
General Counsel

0303#004



## DECLARATION OF EMERGENCY

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

Commercial Laboratories Pending Accreditation  
(LAC 33:I.4501 and 4719)(OS039E4)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and R.S. 30:2074, which allows the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule.

This is a renewal of Emergency Rule OS039E3, which was effective November 11, 2002. The department has begun rulemaking (Log #OS039) to promulgate this regulation. OS039 is expected to be a final regulation on March 20, 2003.

The department relies on analytical data submitted both directly and indirectly to the department to determine compliance with both state and federal regulations. As a result of deadlines established in current Louisiana regulations, the department is prohibited from accepting data from commercial laboratories that have not received departmental accreditation. This Rule will allow the department to accept data from laboratories that have submitted complete applications and supporting documents, have submitted documentation verifying certification/accreditation by a department-approved accreditation program or supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory, and have paid all appropriate fees. A finding of imminent peril to public health, safety, and welfare is based on the inability to accept and review analytical data. Furthermore, the environmental analytical laboratory industry could suffer a loss of jobs.

The department is adding an exemption for personnel monitoring services and those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 *Code of Federal Regulations*, due to the fact that they are licensed under other department regulations and to prevent an additional economic burden and duplication of effort by the department.

The department relies on the analytical data to determine permit compliance, enforcement issues, and effectiveness of remediation of soils and groundwater. Permit issuance and compliance are effective means of determining the impact on human health and the environment. The department must have access to accurate, reliable, precise analytical data in order to meet its mandate to protect human health and the environment.

This Emergency Rule is effective on March 11, 2003, and shall remain in effect for a maximum of 120 days or until the final Rule OS039 is promulgated, whichever occurs first. For more information concerning OS039E4, you may contact the Regulation Development Section at (225) 765-0399.

### Title 33

### Environmental Quality

### Part I. Office of the Secretary

### Subpart 3. Laboratory Accreditation

### Chapter 45. Policy and Intent

### §4501. Description and Intent of Program

A. - D. ...

E. This Subpart shall not apply to the following:

1. laboratory analyses programs accredited under the regulatory and statutory authority of the Louisiana Department of Health and Hospitals; and

2. personnel monitoring services in accordance with LAC 33:XV.430.C and to those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 *Code of Federal Regulations*.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:917 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), LR 29:312 (March 2003).

### Chapter 47. Program Requirements

### §4719. Implementation

A. - B. ...

C. The department will accept analytical data generated by laboratories that do not comply with the deadlines established in Subsection B of this Section for accreditation if such laboratories:

1. have submitted a complete application form and supporting documents;

2. have submitted documentation verifying certification/accreditation by a department-approved accreditation program or supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory; and

3. have paid appropriate fees.

D. These regulations shall not apply to field tests as defined in LAC 33:I.4503.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:312 (March 2003).

L. Hall Bohlinger  
Secretary

0303#067

## DECLARATION OF EMERGENCY

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

Postponement of Permit Deadline  
for Oil and Gas Construction Activities  
(LAC 33:IX.2341)(WQ047E)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish Rules, and of R. S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement the Environmental Protection Agency (EPA) Rule to postpone until March 10, 2005, the permit authorization deadline for National Pollutant Discharge Elimination System (NPDES) storm water permits for oil and gas related construction activity that disturbs one to five acres of land.

This Emergency Rule will allow operators at construction sites related to oil and gas exploration, production, processing, or treatment operations, or transmission facilities that disturb equal to or greater than one acre and less than five acres of land to legally conduct those construction activities without being permitted until the regulations found at LAC 33:IX.2341 can be revised to incorporate the new March 10, 2005, federal permit authorization deadline for those construction activities. The Department of Environmental Quality, Office of Environmental Services (previously known as the Office of Water Resources) became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. An Emergency Rule is necessary in order to comply with federal regulations that require the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the EPA NPDES program. Accordingly, the department adopts the following Emergency Rule.

This Emergency Rule is effective on March 10, 2003, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning WQ047E you may contact the Regulation Development Section at (225) 765-0399.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part IX. Water Quality

#### Chapter 23. The LPDES Program

#### Subchapter B. Permit Application and Special LPDES Program Requirements

#### §2341. Storm Water Discharges

A. - E.7.c. ...

8. Any storm water discharge associated with small construction activity identified in Subparagraph B.15.a of this Section, other than discharges associated with small construction activity at oil and gas exploration, production, process, and treatment operations or transmission facilities,

requires permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by March 10, 2005.

E.9 - G.4.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552 (November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:

L. Hall Bohlinger  
Secretary

0303#066

## DECLARATION OF EMERGENCY

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

Public Notification of Contamination  
(LAC 33:I.Chapter 1)(OS042E2)

In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary to comply with the Governor's October 1, 2001, Executive Order No. MJF 2001-46, entitled "Environmental Contamination Notification." The order states, "the health, safety, and welfare of the people of Louisiana would be improved, and the government would better fulfill its public trust obligations, if those executive branch agencies notified people who may be exposed to environmental contamination when such agency has sound scientific knowledge of environmental contamination that exceeds the applicable federal and state health standards and that may cause adverse health effects."

This Emergency Rule is effective on March 7, 2003, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. This is a renewal of Emergency Rule OS042E1, which was effective on November 7, 2002. The department is drafting a Rule to promulgate these provisions. For more information concerning OS042E2, you may contact the Regulation Development Section at (225) 765-0399.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part I. Office of the Secretary

#### Subpart 1. Departmental Administrative Procedures

#### Chapter 1. Public Notification of Contamination

#### §101. Purpose

A. The purpose of this Chapter is to establish requirements for notifying those members of the public that the department determines are likely to be adversely affected by a release.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

### §103. Definitions

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

*Applicable Federal or State Health and Safety Standard*—such standards the department, based on its knowledge and expertise, determines are applicable to the release site.

*Department*—the Department of Environmental Quality.

*Offsite*—areas beyond the property boundary of the release site.

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

*Release*—the accidental or intentional spilling, leaking, pumping, pouring, emitting, escaping, leaching, or dumping of hazardous substances or other pollutants into or on any land, air, water, or groundwater. A release shall not include a federal or state permitted release or other release authorized by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

### §105. Notification Requirements

A. Notice shall be provided when the department confirms off-site impact that exceeds the applicable federal or state health and safety standard and the department determines that the off-site impact poses a risk of adverse health effects.

B. The department shall issue notice of a release to persons, within the area of contamination, where the department determines that the release poses a risk of adverse health effects.

C. The public notice shall be provided by means reasonably calculated to reach those members of the public directly affected by the release, as determined by the department, and shall provide information regarding potential adverse health effects posed by the contamination, as determined by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

L. Hall Bohlinger  
Secretary

0303#065

## DECLARATION OF EMERGENCY

Office of the Governor  
Division of Administration  
Office of Group Benefits

EPO Plan of Benefits Employer Responsibility  
(LAC 32:V.417)

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 employer responsibility with respect to re-employed retirees. This action is necessary to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment. Accordingly, the following Emergency Rule, revising and amending the EPO Plan of Benefits, is effective March 1, 2003, 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 4. Uniform Provisions

#### §417. Employer Responsibility

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB,

then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

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 25:1837 (October 1999), LR 29:

A. Kip Wall  
Chief Executive Officer

0303#021

## DECLARATION OF EMERGENCY

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

PPO Plan of Benefits C Employer Responsibility  
(LAC 32:III.417)

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 employer responsibility with respect to re-employed retirees. This action is necessary to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment. Accordingly, the following Emergency Rule, revising and amending the PPO Plan of Benefits, is effective March 1, 2003, and shall remain in effect for a maximum of 120 days, or until the final Rule is promulgated, whichever occurs first.

### Title 32

### EMPLOYEE BENEFITS

#### Part III. Preferred Provider (PPO) Plan of Benefits

#### Chapter 4. Uniform Provisions

#### §417. Employer Responsibility

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A participant employer shall immediately inform the OGB Program whenever a *retiree* with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium

rates applicable to the classification for *retirees* without Medicare.

C. Any *participant employer* that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

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 25:1837 (October 1999), LR 29:

A. Kip Wall  
Chief Executive Officer

0303#022

## DECLARATION OF EMERGENCY

**Office of the Governor  
Division of Administration  
Office of State Purchasing**

Procurement of Computer Equipment and Services  
(LAC 34:I.Chapter 55)

The Division of Administration, Office of State Purchasing is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend, repeal and adopt additional Rules in Chapter 55 on Procurement of Computer Equipment and Services under the authority of R.S. 39:199.C and D. The Office of the Governor, Division of Administration, Office of State Purchasing, hereby finds that these Rules are necessary to establish guidelines for Information Technology procurement activities to realize potential savings considering the current financial conditions of the state, and accordingly finds it imperative that the rules be implemented as soon as possible. These Rules shall become effective upon publication, March 20, 2003, for 120 days, or until promulgation of the final Rules, whichever occurs first.

These Rules will amend Rules relative to the purchase and lease of computer hardware and software; the procurement of hardware maintenance, software maintenance, and software support services; and the procedures for Procurement Support Team operations.

Further, the Office of State Purchasing proposes to repeal Rules relative to Emergency Procurement of Data Processing Equipment; Guidelines for Justification of Multi-Year Data Processing Leases; Unscheduled Maintenance of Data Processing Equipment; Procedures for Disposing of Leased, Rented or Purchased Data Processing Equipment; and Equipment Specifications in Solicitations, LAC 34:I.Appendix A.1-9:5, 1-9:6 and 1-9:7, 1-9:9, and 1-9:12, respectively.

The Office of the State Register will also renumber LAC 34:I.Appendix A to meet the APA mandate of prescribing "a

uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code." The following table should clarify the renumbering effort.

Former Section Number under Appendix A	New Section Number
New Material	5501
1-9:3	5503
1-9:4	5505, 5507, 5509, 5511
1-9:5	Repealed
1-9:6	Repealed
1-9:7	Repealed
1-9:8	5513
1-9:9	Repealed
1-9:12	Repealed

**Title 34**

**GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**

**Part I. Purchasing**

**Chapter 55. Procedures for Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance**

**§5501. General**

A. This Chapter describes the procedures that all agencies in the executive branch must follow for the procurement of Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance. Situations not covered by these rules may be found in the general statutes and rules and regulations of the Procurement Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:

**§5503. Procedures for Procurement of Information Technology Hardware**

A. This Section describes the information that all agencies in the Executive Branch must furnish when seeking approval of the Office of State Purchasing for the procurement of information technology hardware including installation with a cost exceeding the agency's delegated purchasing authority. Information technology hardware, for the purpose of this Section, is defined as any electronic data processing device including but not limited to central processing units, memory, peripheral devices, unit record equipment, data communications equipment, mini-computers and peripherals, graphics equipment including digitizers and plotters, optical scanning equipment, and shared logic word processing equipment, printers, multifunctional devices, and scanners. Equipment that does not fit into any of the above categories will be handled on a case-by-case basis and the agency must contact the Office of State Purchasing for a ruling on the justification required.

B. This Section does not apply to acquisitions from State Brand Name Contracts. Terms and conditions for Brand Name Contracts may contain additional procedures that an agency must follow. However an approved IT-10 is needed for all IT procurements in excess of \$100,000.

C.1. For requests not covered by an existing contract, the following should be provided to the Office of State Purchasing to avoid delays in approval:

a. a general description of the mission to be accomplished using the requested equipment;

b. a detailed list of the proposed equipment, including quantities and estimated costs for lease, purchase, rental, maintenance, etc;

c. an approved IT-10 form with all requests for procurements in excess of \$100,000.

2. The Office of State Purchasing may require additional information or justification, as it deems appropriate for any particular procurement request.

D. Each agency contemplating a procurement greater than the agency's delegated purchasing authority shall, upon definition of the preliminary functional requirements, submit a draft solicitation to the Office of State Purchasing. If the procurement exceeds \$100,000, the Office of State Purchasing shall schedule a Procurement Support Team (PST) meeting. The Procurement Support Team participation may include assistance in finalizing the solicitation. The Procurement Support Team participation must include, as a minimum, assistance in evaluation of bids or proposals and negotiations of contract terms (if applicable).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

**§5505. Procedures for the Procurement of Information Technology Software**

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software.

B. Information technology software, for the purpose of this Section is defined as any program or series of programs offered commercially to computer installations.

C. If the cost of the information technology software including modifications, installation integration, training for the total project plus maintenance and support services, for a 12 month period to be acquired is under \$100,000, it is deemed to have the advance approval of the Office of State Purchasing and shall not be for a price greater than the vendor's published price.

1. The agency must include in the procurement file a list of all known information technology software packages investigated which claim to accomplish the required task. Name each investigated, its total cost, and the rationale for selection or rejection.

2. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software (including modifications, installation integration, training, etc.), with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology

software with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software procurements of \$100,000 or greater will be competitively obtained through and ITB, RFP or through an OIT pricing agreement administered by the Office of State Purchasing.

3. Information technology software procurements of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

4. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

#### **§5507. Procedures for the Procurement of Information Technology Hardware Maintenance**

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology hardware maintenance.

B. For purposes of this Section, information technology hardware maintenance consists of remedial maintenance, preventative maintenance, replacement parts, labor and engineering changes necessary to keep information technology hardware in good working condition.

C. Procurements for information technology hardware maintenance under \$100,000 may be handled non-competitively and are deemed to have the advanced approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology hardware maintenance with a total cost greater than \$100,000 whenever possible.

1. Information technology hardware maintenance over \$100,000 may be procured non-competitively from the original equipment manufacturer (OEM) if the maintenance is for mission critical equipment (such as mainframes, mainframe peripherals, enterprise servers, or network backbone components). The agency must submit a letter of justification signed by the head of the agency or his designee to the Office of State Purchasing.

2. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology hardware maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

3. Information technology hardware maintenance not covered in Paragraph D.1 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB), or Request for Proposal (RFP) process.

4. Information technology hardware maintenance of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

#### **§5509. Procedures for the Procurement of Information Technology Software Maintenance**

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software maintenance.

B. For the purposes of this Section, information technology software maintenance includes on-site, telephone and/or on-line troubleshooting, installation assistance, basic usability assistance, etc. Information technology software products and technologies to be covered include operating systems, application software and systems, application software, and systems and network management software, tools and utilities.

C. Procurements for information technology software maintenance under \$100,000 may be handled non-competitively and are deemed to have the advanced approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software maintenance with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology software maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software maintenance in which the software vendor is the only authorized entity to provide product fixes, patches, updates, or upgrades can continue to be handled non-competitively in accordance with R.S. 39:199.D. A letter from the information technology software vendor substantiating the above information is required.

3. Any other type of information technology software maintenance not covered in Paragraphs D.1 or D.2 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB) or Request for Proposal (RFP) process.

4. Information technology software maintenance with a cost of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

**§5511. Procedures for the Procurement of Information Technology Software Support Services**

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software support services.

B. For purposes of this Section, information technology software support services include capacity planning, performance analysis, on-site troubleshooting, custom modifications, etc.

C. Procurements for information technology software support services under \$50,000 may be handled non-competitively and are deemed to have the advance approval of the Office of State Purchasing. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. Procurements shall not be artificially divided to circumvent the \$50,000 threshold.

E. Information technology software support services of \$50,000 or greater must be procured using the Consulting and Support Services Agreement (CSSA) or the Request for Proposal (RFP) process in accordance with R.S. 39:1481 et seq. (Office of Contractual Review).

F. Information technology software support services of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

G. It is the state's intent to compete information technology software support services with a total cost of \$50,000 or greater whenever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199D

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February, 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

**§5513. Procurement Support Team Operations**

**A. Procurement Support Team Composition**

1. A Procurement Support Team (PST) shall be formed in accordance with the procedures defined herein for every information technology contract in an amount \$100,000 or greater for the procurement of information technology hardware, hardware maintenance, software, software maintenance, and software support services. All contracts shall be subject to the review and approval of other agencies as required by statute or regulations. Purchase release orders issued pursuant to a Direct Order Contract or a Brand Name Contract shall not constitute a contract for purposes of these procedures. The formation of a Procurement Support Team shall be accomplished by the Office of State Purchasing and shall include one or more representatives from each of the following: the Office of State Purchasing; the Legislative Legal Staff; the using agency initiating the procurement action; and the Legislative Fiscal Office. The Office of Information Technology will provide technical staff to assist the Office of State Purchasing and the Procurement Support Team.

2. At least two members of each Procurement Support Team shall have formal training in contract negotiations. The Legislative Fiscal Officer, the speaker of the House of Representatives and the president of the Senate (jointly), and the head of the Purchasing Agency (or his designee), shall each designate in writing to the Office of State Purchasing the names of a primary and an alternate team member. It shall be the responsibility of each named agency to keep the Office of State Purchasing advised of any changes in designated individuals.

3. The individual agencies represented on procurement support teams will have the following primary responsibilities. These responsibilities may be enlarged or modified as appropriate to each given situation by the procurement support team leader with the concurrence of the Office of State Purchasing.

a. Legislative Fiscal Office. The Legislative Fiscal Office shall have the primary responsibility for the analysis of solicitations and review of funding procedures and certification of specific appropriation for the purpose prior to the final contract award.

b. Legislative Legal Staff. The Legislative Legal Staff shall have the primary responsibility for developing the legal terms and conditions of draft contracts, evaluating the legal impact of substantive terms and conditions, review to ensure compliance with statutes and regulations, and legal negotiations.

c. Office of State Purchasing. The Office of State Purchasing shall have primary responsibility for insuring compliance with procurement procedures and regulations, the drafting of solicitations, and the evaluation of bids and proposals.

d. The Procuring Agency. The procuring agency shall have primary responsibility for the determination of compliance of bids or proposals with the functional requirements, and for all management decisions at each phase of the procurement process.

4. The Office of Information Technology shall provide technical staff to assist the Office of State Purchasing and the Procurement Support Team. They shall provide advice and support in the area of information technology techniques, negotiation techniques, developing the structure and content of solicitations, and evaluation of bids or proposals, as requested by the Office of State Purchasing.

B. Procurement Support Team Involvement. The Procurement Support Team participation may include assistance in finalizing the solicitation. Procurement Support Team participation must include, as a minimum, assistance in evaluation of bids and proposals, and negotiations of contract terms (if applicable). Assistance shall consist of reviewing the evaluation process and recommendation of award. Procurements requiring this level of support will involve the active participation of all of the members of the Procurement Support Team as a unit.

1. The Office of State Purchasing, pursuant to the guidelines established therein, shall be responsible for convening a Procurement Support Team if the procurement is \$100,000 or greater. The Office of State Purchasing will designate the team leader.

2. At least four members, one from each office designated, must be present to constitute a quorum.

3. There will be at least one meeting during the procurement process. Each member of the Procurement Support Team must assist in the evaluation of bids or proposals, and negotiation of contracts (if applicable). The Procurement Support Team will make written evaluations and recommendations as a group; these will not supplant written individual agency approvals as required by statute or regulations. This review must be indicated by the signature of each team member on the Procurement Support Team review form, which is maintained by the Office of State Purchasing. In the event a team member indicates acceptance or concurrence of any activity, and the team member's agency subsequently refuses to approve the process pursuant to its statutorily required review, the reviewing agency and the individual team member must submit to the team leader written reasons for their actions. The team leader shall file these documents in the final activity file.

4. In situations where formal negotiations with prospective vendors or a successful bidder or proposer are appropriate, such negotiations will be conducted by a negotiation team appointed by the Procurement Support Team leader. One member of the negotiating team will be designated as lead negotiator. The results of such negotiations will, of course, be subject to all statutorily required reviews. The lead negotiator and at least one other member of the negotiating team should have formal training in contract negotiations.

5. After the procurement process has been completed, one copy of the documentation related to the procurement will be retained on file by the Office of State Purchasing.

6. The Office of State Purchasing shall have final statutory approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77, (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:

Denise Lea  
Director

0303#062

## **DECLARATION OF EMERGENCY**

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

Durable Medical Equipment Program  
Vagus Nerve Stimulators  
(LAC 50:XVII.Chapter 136)

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage for durable medical equipment and supplies under the Medicaid Program. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. In concurrence with the recommendations of the Medical Practices Committee, the bureau established medical necessity criteria for the prior authorization of vagus nerve stimulators (*Louisiana Register, Volume 27, Number 12*). Vagus nerve stimulators (VNS) are implantable devices used to assist in the control of seizures related to epilepsy. This Emergency Rule is being adopted to continue provisions contained in the December 1, 2001 Rule. This action is being taken in order to protect the health and well being of Medicaid recipients who have epilepsy related seizures and may benefit from use of this medical device.

Effective March 30, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following criteria for prior authorization of vagus nerve stimulators (VNS) under the Durable Medical Equipment Program. The VNS is an implantable device used to assist in the control of seizures related to epilepsy and must be prescribed by a physician.

#### **Title 50**

### **PUBLIC HEALTH MEDICAL ASSISTANCE**

#### **Part XVII. Durable Medical Equipment**

##### **Subpart 1. Prosthetics**

#### **Chapter 136. Vagus Nerve Stimulator**

##### **§13601. Prior Authorization**

A. The Vagus Nerve Stimulator (VNS) is an implantable device used to assist in the control of seizures related to epilepsy and must be prescribed by a physician. Implantation of the VNS device and all related procedures must be authorized by the department based on criteria in §§13603-13607.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

##### **§13603. Recipient Criteria**

A. Inclusion Criteria. Consideration shall be given for Medicaid reimbursement for implantation of the VNS if the treatment is considered medically necessary and the patient meets all of the following criteria. The patient:

1. has medically intractable epilepsy;
2. is 12 years of age or older, although case-by-case consideration may be given to younger children who meet all other criteria and have sufficient body mass to support the implanted system;
3. has a diagnosis of partial epilepsy confirmed and classified according to the *International League Against Epilepsy* classification. The patient may also have associated generalized seizures, such as tonic, tonic-tonic, or atonic. The VNS may have efficacy in primary generalized epilepsy as well;
4. has seizures that resist control by antiepilepsy treatment, with adequately documented trials of appropriate antiepilepsy drugs or documentation of the patients inability to tolerate these medications;
5. has undergone surgical evaluation and is not considered to be an optimal candidate for epilepsy surgery;



6. is experiencing at least four to six identifiable partial onset seizures each month. The patient must have had a diagnosis of intractable epilepsy for at least two years. The two-year period may be waived if it is deemed that waiting would be harmful to the patient;

7. has undergone Quality of Life (QOL) measurements. The choice of instruments used for the QOL must assess quantifiable measures of day to day life in addition to the occurrence of seizures. In the expert opinion of the treating physician, and clearly documented in the request for prior authorization, there must be reason to believe that QOL will improve as a result of the VNS implant. This improvement should be in addition to the benefit of seizure frequency reduction.

**B. Exclusion Criteria**

1. Regardless of the provisions of §13603.A, authorization for implantation of a VNS shall not be given if the patient meets one or more of the following criteria. The patient:

- a. has psychogenic seizures or other nonepileptic seizures; or
- b. has systemic or localized infections that could infect the implanted system; or
- c. has a body mass that is insufficient to support the implanted system; or
- d. has a progressive disorder that is a contraindication to VNS implantation.

2. Examples are malignant brain neoplasm, Rasmussen's encephalitis, Landau-Kleffner Syndrome and progressive metabolic and degenerative disorders. Progressive disorders, psychosis, or mental retardation that are not contraindications to VNS implantation are not exclusion criteria. Taking into consideration the additional diagnosis, the treating physician must document the benefits of the VNS.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

**§13605. Reprogramming Vagus Nerve Stimulator**

A. The programming of the VNS stimulator must be performed by the neurosurgeon who performed the implant procedure or a licensed neurologist. The procedure is subject to prior authorization. Authorization will only be considered when there is medical documentation to support the need for programming. This documentation must include clinical evidence to show that the recipient has experienced seizures since any previous programming attempts. Payment for the programming procedure will only be authorized when it is performed as an attempt to reduce or prevent future episodes of seizures. The success or failure of previous programming attempts to reduce the onset and/or severity of seizure activity will be considered. Authorization will not be considered when the clinical documentation does not show any seizure activity since the last programming of the VNS implant or the purpose of the programming is solely to reduce the level of anti-epileptic drugs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

**§13607. Subsequent Implants/Battery Replacement**

A. Requests to replace batteries or for new implants must be submitted with documentation that shows that the recipient was benefiting from the original VNS transplant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

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

David W. Hood  
Secretary

0303#053

**DECLARATION OF EMERGENCY**

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

Medicaid Eligibility Qualified Individuals  
Medicare Part B Buy-In

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

The bureau promulgated a Rule in July 1998 adopting the provisions of Section 4732 of the Balanced Budget Act of 1997 governing the payment of Medicare Part B premiums for Qualified Individuals (QIs) in the two mandatory eligibility groups (*Louisiana Register, Volume 24, Number 7*). The provisions were effective for premiums payable beginning January 1, 1998 and ending December 31, 2002. Payment for the Medicare premiums is provided by 100 percent federal funds, which are provided as a capped annual grant. The number of QIs certified is limited by availability of these funds. Individuals in the first group of QIs (QI-1s) were eligible if their incomes were above 120 percent of the Federal poverty line, but less than 135 percent. The Medicaid benefit for QI-1s consisted of payment of the full Medicare Part B premium.

Federal statutory authority for the payment of Medicare Part B premiums benefits for QIs was originally intended to expire on December 31, 2002. A Continuing Resolution (Public Law No. 107-229, as amended by Public Law Nos. 107-240 and 107-244) was enacted to extend the QI-1 benefits at the current funding levels through January 21,

2003. The Bureau promulgated an emergency rule to amend the July 20, 1998 rule by extending the benefits for QI-1s (*Louisiana Register, Volume 28, Number 12*). The Continuing Resolution was again amended by Public Law No. 107-294, extending the QI-1 benefits at the current funding levels through March 12, 2003. The Bureau promulgated an emergency rule to amend the January 1, 2003 rule by extending the benefits for QI-1s (*Louisiana Register, Volume 29, Number 1*). Congress has subsequently passed the federal budget for fiscal year 2003 which includes an appropriation to extend the QI-1 benefits at the current funding levels through September 30, 2003. Therefore, Bureau proposes to amend the January 21, 2003 Emergency Rule and again extend coverage of benefits for Qualifying Individuals-1. This action is being taken to avoid federal sanctions by complying with changes in federal regulations. It is estimated that the implementation of this Emergency Rule has no fiscal impact for state fiscal year 2002-2003 other than the administrative cost of promulgating the Rule.

#### **Emergency Rule**

Effective March 21, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the January 21, 2003 Emergency Rule and extends payment of Medicare Part B premiums for Qualifying Individuals-1 through September 30, 2003.

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

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

David W. Hood  
Secretary

0303#051

### **DECLARATION OF EMERGENCY**

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

#### **Pharmacy Benefits Management Program Prescription Limit**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2001-2002 General Appropriation Act which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish

these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers the Pharmacy Benefits Management Program under the Medicaid Program in accordance with federal and state regulations which govern Medicaid coverage of prescription drugs. Although federal regulations permit states to establish recipient service limits with a provision for exemption of certain recipient groups, the bureau has not established any limits on the number of prescriptions allowed to Medicaid recipients. In compliance with Executive Order MJF 02-29, the department proposes to establish a limit of eight prescriptions per calendar month with provisions for exemption of federally mandated eligibles and for the prescriber to override the limit in medically necessary cases.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of the following Emergency Rule will reduce expenditures by approximately \$12,500,000 for state fiscal year 2002-2003.

#### **Emergency Rule**

Effective March 3, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the provision of prescription drug benefits offered to Medicaid recipients under the Medicaid Pharmacy Benefits Management Program.

1. The Department of Health and Hospitals will pay for a maximum of eight prescriptions per calendar month for Medicaid recipients.

2. The following federally mandated recipient groups are exempt from the eight prescriptions per calendar month limitation:

- a. persons under 21 years of age;
- b. persons who are residents of long-term care institutions, such as nursing homes and ICF-MR facilities; and

c. pregnant women.

3. The eight prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates to the pharmacist the following information in his own handwriting or by telephone or other telecommunications device:

- a. "medically necessary override"; and
- b. a valid ICD-9-CM Diagnosis Code that directly relates to each drug prescribed that is over eight. (No ICD-9-CM literal description is acceptable.)

4. The prescriber should use the Clinical Drug Inquiry. (CDI) Internet web application developed by Unisys in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than eight prescriptions per calendar month is required by the recipient.

5. Printed statements without the prescribing practitioner's signature, check-off boxes or stamped signatures are not acceptable documentation.

6. An acceptable statement and ICD-9-CM are required for each prescription in excess of eight for that month.

7. Pharmacists and prescribers are required to maintain documentation to support the override of a prescription limitation.

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

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

David W. Hood  
Secretary

0303#006

#### **DECLARATION OF EMERGENCY**

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

Private Hospitals COutpatient Services  
Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2002-2003 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in January of 1996 which established the reimbursement methodology for outpatient hospital services at an interim rate of sixty percent of billed charges and cost settlement adjusted to eighty-three percent of allowable costs documented in the cost report, except for laboratory services subject to the Medicare Fee Schedule and outpatient surgeries (*Louisiana Register, Volume 22, Number 1*).

As a result of a budgetary shortfall, the Bureau amended the provisions contained in the January 1996 rule governing the reimbursement methodology for outpatient hospital services. Reimbursement for those surgical procedures that were not included on the Medicaid outpatient surgery list was set at the highest flat fee in the four Medicaid established outpatient surgery payment groups when the procedure is performed in an outpatient setting. In addition, the interim reimbursement rate for all other outpatient hospital services was changed to a hospital specific cost to charge ratio calculation based on filed cost reports for the period ending in state fiscal year 1997 (*Louisiana Register, Volume 26, Number 12*).

As a result of a budgetary shortfall, the Bureau has determined it is necessary to adjust the interim reimbursement rate for hospital outpatient services in private hospitals to a hospital specific cost to charge ratio calculation based on the latest filed cost reports. The final reimbursement for these services will continue to be cost settlement at 83 percent of allowable costs. This action is necessary in order to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this emergency rule will reduce expenditures for outpatient services by approximately \$7,134,381 for state fiscal year 2002-2003.

#### **Emergency Rule**

Effective for dates of service March 1, 2003 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for outpatient hospital services to a hospital specific cost to charge ratio calculation based on the latest filed cost report. These cost to charge ratio calculations will be reviewed on an ongoing basis as cost reports are filed and will be adjusted as necessary.

Implementation of the provisions of this Rule will be delayed until March 30, 2003 and shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood  
Secretary

0303#052

#### **DECLARATION OF EMERGENCY**

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

Private Nursing Facilities CReimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule under the Medical Assistance

Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2002-2003 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law". This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

In accordance with state law, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established a system of prospective payment for nursing facilities, effective January 1, 2003, based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology. This system established a facility specific price for the Medicaid nursing facility residents served. It also provided for enhanced reimbursement for Medicaid residents who require skilled nursing services for an infectious disease and technology dependent care. Facilities may furnish any or all of these levels of care to residents. Every nursing facility must meet the requirements for participation in the Medicaid Program (*Louisiana Register, Volume 28, Number 8*).

As a result of a budgetary shortfall, the bureau has determined it is necessary to reduce each private nursing facility's per diem case mix rate by \$37.10, an average of 46.87 percent per facility. This action is being taken in order to avoid a budget deficit in the medical assistance program. It is estimated that implementation of this Emergency Rule will reduce expenditures to the private nursing facilities by approximately \$70,014,755 for state fiscal year 2002-2003.

#### **Emergency Rule**

Effective for dates of service on or after March 1, 2003 the Department of Health and Hospitals, Bureau of Health Services Financing reduces each private nursing facility's per diem case mix rate by \$37.10, an average of 46.87 percent per facility.

Implementation of the provisions of this Rule will be delayed until March 30, 2003 and shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood  
Secretary

0303#054

## **DECLARATION OF EMERGENCY**

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

#### **Oyster Lease Moratorium (LAC 76:VII.505)**

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429 and R.S. 56:432.1, the Wildlife and Fisheries Commission declares an immediate moratorium on the issuance of oyster leases and on the taking of oyster lease applications for state waterbottoms not presently under lease. Continuation of issuance of new oyster leases would pose an imminent peril to the public welfare and requires adoption of a rule upon shorter notice than provided in R.S. 49:953.A, the Wildlife and Fisheries Commission does hereby adopt the following Emergency Rule. Adoption of this Declaration of Emergency is necessary, according to the Department of Natural Resources, inasmuch as immediate action is essential to reduce the state's exposure to potential claims from oyster leaseholders and further, that failure to do so would pose an imminent peril to the coastal restoration program and to the federal/state partnership which is critical to the efforts of the state to obtain comprehensive coast-wide restoration authorization and funding.

This Declaration of Emergency will become effective on February 26, 2003, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **PART VII. Fish and Other Aquatic Life**

#### **Chapter 5. Oyster**

#### **§505. Oyster Lease Moratorium**

A. A moratorium on the issuance of oyster leases for waterbottoms not presently under lease is established. This includes a moratorium on the taking of oyster lease applications for waterbottoms not presently under lease. All pending applications will be held, along with all fees paid, pending a resolution of the moratorium, unless the applicant requests cancellation of the application and refund of fees. In the event of the death of an applicant, the applicant's heirs or legatees should so notify the department; and any lease ultimately issued shall only be issued to persons placed in possession of the application by Judgement of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.

B. A moratorium is placed on the auction of oyster leases in default in payment of rent per LAC 76:VII.501.G, as authorized by R.S. 56:429.

C. Any leases selected by a leaseholder who has previously selected the relocation option pursuant to R.S. 56:432.1 shall be exempt from this moratorium but only to the extent of such previous selection.

D. At such time as the moratorium is lifted, applications for oyster leases will be accepted in accordance with all applicable statutes, rules and regulations and the procedures set out below.

1. One week prior to the date that the moratorium is lifted, the date, time and place where applications are to be taken will be publicly advertised.

2. On the date for taking of applications only one applicant at a time will be allowed in the office and this applicant will be allowed to take only one application. Each applicant will have 15 minutes to designate the area he wishes to apply for. After the applicant pays the application and survey fees, he may return to the end of the line for another application.

3. Applications will be taken 24 hours a day (on a first come basis) until the department feels the influx of applicants can be handled during regular office hours at the New Orleans Office, at which time anyone will be able to take an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:948 (November 1984), amended LR 29:

James H. Jenkins, Jr.  
Secretary

0303#003

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Turkey SeasonCFort Polk

In accordance with the emergency provision of R.S. 49:953(B) 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 adopt the following Emergency Rule.

Fort Polk Wildlife Management Area Lottery Youth Turkey Hunt	Canceled
Peason Ridge Wildlife Management Area Lottery Youth Turkey Hunt	March 15, 2003

A Declaration of Emergency is necessary to cancel the lottery youth hunting season on Fort Polk WMA. The U.S. Army has advised the Department of Wildlife and Fisheries that current military initiatives have resulted in an increased level of training resulting in only 2000 acres of land being available for this hunt. However, they have made available the Peason Ridge WMA as an alternate site for this hunt. This WMA encompasses 34,000 acres and harbors an extensive turkey population. As of this date, 3/6/03, nine youth hunters have already been drawn and notified of their selection for the hunt at Fort Polk WMA.

Terry D. Denmon  
Chairman

0303#088

# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators  
CGuidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems  
(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, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975).

At its September 2002 meeting, the State Board of Elementary and Secondary Education revised the Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems: Participation in the LEAP 21. These guidelines provide guidance, clarification to *Bulletin 741 Standards 2.026.06, 2.026.08 and 2.026.09* as they relate to the participation of students transferring into the public schools from nonpublic schools and home schooling. The revisions:

- removed any reference to the special education waiver;
- clarified student eligibility to attend summer remediation;
- clarified eligibility requirements for the appeals process;
- outlined the role of the local Pupil Progression Plan in governing grade placement; and
- defined a Louisiana resident for the purposes of this policy.

### Title 28 EDUCATION

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

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

#### Subchapter A. Bulletins and Regulations

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

##### A. Bulletin 741

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(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 LR 28:269, 272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:286 (March 2003).

#### Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems: Participation in the LEAP 21

Students in Grades 5 and 9 transferring to the public school system from any in-state nonpublic school or any home schooling program, or any Louisiana resident transferring from any out-of-state school shall be required to take the 4th or 8th Grade LEAP 21 English Language Arts

and Mathematics Tests and score at the *Approaching Basic* or above achievement level. The following Guidelines shall apply.

1. Students may take LEAP 21 at either the Spring or Summer administration prior to enrollment. It is the responsibility of the parent to contact the District Test Coordinator to register for the test.

2. The nonpublic school and parent (or home schooling parent) is responsible for providing the District Test Coordinator, at least 10 working days prior to the testing date, any documentation required for requested standard testing accommodations.

3. Students with disabilities who have a current 1508 evaluation will participate in on-level LEAP 21 testing. Promotion decisions for these students will adhere to those policies as outlined in the High Stakes Testing Policy.

4. School systems may charge a fee for the testing of nonpublic and home schooling students. This testing fee shall be refunded upon the student's enrollment in that public school system the semester immediately following the testing.

5. Students who participate in the Spring administration and score at the *Unsatisfactory* achievement level are eligible to retake the LEAP 21 at the Summer administration.

6. Local school systems shall offer LEAP 21 summer remediation to nonpublic/home schooling 4th and 8th Grade students who score at the *Unsatisfactory LEAP 21* achievement level and to those who did not test in the spring, but wish to prepare for the Summer administration. School systems may charge a fee, not to exceed \$100 per student for this attendance. This summer remediation fee shall be refunded upon the student's enrollment in that public school system the semester immediately following summer remediation.

7. Students who score at the *Unsatisfactory* achievement level are not required to attend summer school offered by the local school system to be eligible to take the Summer retest. However, students must attend the LEA offered summer school to be eligible for the appeal process or the policy override.

8. Only those students who score at the *Unsatisfactory* achievement level after participation in both the Spring and Summer administration of the LEAP 21 and who attend the summer school offered by the local school system are eligible for the appeals process or the policy override, provided all criteria are met. (Refer to the High-Stakes Testing Policy.)

9. Students who participate in the Spring administration only or Summer administration only and score at the *Unsatisfactory* achievement level are not eligible for the appeals process or the policy override. These students are not eligible to take The Iowa Tests for placement purposes.

10. Students transferring into local school systems after the LEAP 21 Summer retest but prior to February 15 are

required to take the state selected form of The Iowa Tests for grade placement, if the student has not taken LEAP 21.

11. Students taking The Iowa Tests are not eligible for either a retest or the appeals process. These students may be eligible for the policy override based upon a decision by the School Building Level Committee (SBLC).

12. The High Stakes Testing Policy and the local Pupil Progression Plan shall govern grade placement of students transferring to the local school systems.

Note: A Louisiana resident transferring from any out-of-state school is defined as a student living in Louisiana but attending school in an adjacent state.

Weegie Peabody  
Executive Director

0303#018

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook For School  
Administrators C Personal Financial Literacy  
(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, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). This action is a result of recent legislation (R.S. 17:282.3) directing the Board of Elementary and Secondary Education to adopt Rules and guidelines to further enhance efforts to promote financial literacy in schools. The addition of this procedural block to Bulletin 741 will encourage local school systems to integrate the teaching of personal management skills and the basic principles involved with earning, spending, saving, and investing into currently existing courses.

**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), (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 LR 28:269, 272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:287 (March 2003).

**Curriculum**

**1.087.00** The school system shall plan and implement a continuous program of skills, concepts, and instruction in a learning environment designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his/her full potential.

The school system shall develop a character education philosophy and implementation plan consistent with its locally developed curriculum.

Any public elementary or secondary school may offer instruction in personal financial management based on the concept of achieving financial literacy through the teaching of personal management skills and the basic principles involved with earning, spending, saving, and investing. Such instruction and subject matter shall be integrated into an existing course of study.

Weegie Peabody  
Executive Director

0303#017

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741C Louisiana Handbook for School  
Administrators C 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 existing policy as follows:

1. changes in the criterion-referenced test (CRT) labeling system;
2. clarification of the process for schools entering/progressing into Corrective Actions;
3. clarification of the process for offering School Choice to students enrolled in Academically Unacceptable schools;
4. inclusion of the requirement of offering state approved supplemental services to students enrolled in Corrective Actions Level II and III schools; and
5. inclusion of the reporting of subgroup performance.

**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), (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 LR 28:269, 272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:287 (March 2003).

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**The Louisiana School and  
District Accountability System  
School Accountability**

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

K-8 Indicators and Weighting			
Indicators and Weighting	Grades Administered	10-Year Goal	20-Year Goal
CRT (60% K-8)	Grades 4, 8	Average student score at BASIC (Meeting the Standard)	Average student score at MASTERY (Exceeding the Standard)
NRT (30% K-8)	Grades 3, 5, 6, 7	Average composite standard score corresponding to the 55th percentile rank in the tested grade level	Average composite standard score corresponding to the 75th percentile rank in the tested grade level
Attendance (10% K-6; 5% 7-8)		95% (grades K-8)	98% (grades K-8)
Dropout Rate (5% 7-8)		4% (grades 7-8)	2% (grades 7-8)

9-12 Indicators and Weighting					
Indicator	Weight Cycle		Grades Administered	10-Year Goal	20-Year Goal
	1	2			
	CRT— English/language arts and mathematics	60%			
CRT— science and social studies	--	30%	11	Average student score at BASIC (Meeting the Standard)	Average student score at MASTERY (Exceeding the Standard)
NRT		30%	9	Average composite standard score corresponding to the 55 <sup>th</sup> percentile rank in the tested grade level	Average composite standard score corresponding to the 75 <sup>th</sup> percentile rank in the tested grade level
Attendance Rate		5%		93%	96%
Dropout Rate		5%		7%	3%

### School Performance Scores

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

For the first accountability cycle, the baseline SPS shall be calculated using CRT and NRT scores from spring 1999 and the prior year's attendance and dropout data. The Growth SPS shall be calculated using CRT and NRT scores from spring 2001 and the prior year's attendance and dropout data.

<p>During the fall of 2001 for K-8 schools, each school shall receive <b>two</b> School Performance Scores as follows:</p> <ul style="list-style-type: none"> <li>a Growth SPS will be calculated using 2001 English language arts/Math LEAP 21 test scores, 2001 Iowa test scores, and 2000 attendance and dropout data.</li> <li>a new Baseline SPS will be calculated using the average of the 1999-2000 and 2000-2001 English language arts/Math/Science/Social Studies LEAP 21 test scores, the average of the 1999-2000 and 2000-2001 Iowa test scores and the average of the 1999 and 2000 attendance and dropout data.</li> </ul> <p>The Growth SPS shall be used to determine Growth Labels and to calculate rewards. The new Baseline shall be used to determine Performance Labels and to calculate the next cycle's Growth Target. The higher SPS (Growth or Baseline) shall be used to determine movement in Corrective Actions. (See Standard 2.006.09)</p>
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Beginning the second cycle, every year of student data shall be used as part of a school's SPS. Calculations of the SPS shall use the following:

- an average of the most recent two year's test data, and
- attendance and dropout rates from the two years prior to the last year of test data used.

For schools entering accountability after 1999, one year's data shall be used for schools formed in mid-cycle years and two year's data for other schools. Only spring administration test data shall be used in the School Performance Score.



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

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

- a score for regular education students, including gifted, talented, and Section 504 students.
- a score including regular education students AND students with disabilities eligible to participate in the CRT and/or NRT tests.

For the purpose of determining Academically Unacceptable Schools, during the summer of 1999 for K-8 schools, the School Performance Score that includes only regular education students shall be used.

**Formula for Calculating an SPS [K-6]**

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

<i>Indicator</i>	<i>Index Value</i>	<i>Weight</i>	<i>Indicator Score</i>
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance	50.0	10%	5.0
Dropout	N/A	0%	0
			SPS = 67.1

**Criterion-Referenced Tests (CRT) Index Calculations [K-8]**

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

Advanced =	200 points
Mastery (Exceeding the Standard) =	150 points
Basic (Meeting the Standard) =	100 points
Approaching Basic (Approaching the Standard) =	50 points
Unsatisfactory =	0 points

**Formula for Calculating a CRT Index for a School [K-8]**

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

**Option I students:** those students failing the 8th grade LEAP 21 that have been

- retained on the 8th grade campus
- must retake all parts of the 8th Grade LEAP 21

If, during spring testing, a repeating fourth grade student or Option I 8th grade student receives a score of Approaching Basic (Approaching the Standard) or above on a LEAP 21 test of mathematics, English language arts, science or social studies for which he/she received a score of Unsatisfactory the previous spring, the retaining school shall receive 50 incentive points per subject in its accountability index. A student may earn a maximum of 200 incentive points for his/her school. (No incentive points will be awarded for passing parts of tests in the summer school of the year they first failed in spring testing.)

Transition Years [K-8]

To accommodate the phase-in of the Social Studies and Science components of the CRT for Elementary and Secondary Accountability Cycles, the State Department of Education shall use following LEAP Test components when calculating the School Performance Scores (SPS) for K-8:

Timelines/School Years			LEAP-CRT Index Components							
Cycle	Baseline SPS Data	Growth SPS Data	Grade							
			4				8			
			ELA	Math	Science	Social Studies	ELA	Math	Science	Social Studies
1	1998-1999	2000-2001	✓	✓			✓	✓		

2	1999-2000 & 2000-2001	2001-2002 & 2002-2003	✓	✓	✓	✓	✓	✓	✓	✓
3	2001-2002 & 2002-2003	2003-2004 & 2004-2005	✓	✓	✓	✓	✓	✓	✓	✓

**Norm-Referenced Tests (NRT) Index Calculations [K-8]**

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

**NRT Goals and Equivalent Standard Scores**

Composite Standard Scores Equivalent to  
Louisiana's 10- and 20-Year goals, by Grade Level \*

Grade					
Goals	Percentile Rank	3	5	6	7
10-Year Goal	55th	187	219	231	243
20-Year Goal	75th	199	236	251	266

**NRT Formulas Relating Student Standard Scores to NRT Index [K-8]**

Where the 10-year and 20-year goals are the 55th and 75th percentile ranks, respectively, and where SS = a student's standard score, then the index for that student is calculated as follows:

Grade 3:	Index 3 <sup>rd</sup> grade = (4.167 * SS) - 679.2 SS = (Index 3rd grade + 679.2)/4.167
Grade 5:	Index 5 <sup>th</sup> grade = (2.941 * SS) - 544.1 SS = (Index 5th grade + 544.1)/2.941
Grade 6:	Index 6 <sup>th</sup> grade = (2.500 * SS) - 477.5 SS = (Index 6th grade + 477.5)/2.500
Grade 7:	Index 7 <sup>th</sup> grade = (2.174*SS) - 428.3 SS= (Index 7th grade + 428.3)/2.174

**Formula for Calculating a School's NRT Index [K-8]**

1. Calculate the index for each student, using the grade-appropriate formula relating the Standard Score to NRT Index. (NOTE: For accountability purposes, a student not taking the test and not exempted will be assigned a zero NRT index.)
2. Sum the total number of NRT Index points for all grades in the school.
3. Divide the sum of the NRT Index points by the total number of students eligible to be tested plus the number of students not exempted.  
Zero shall be the lowest NRT Index score reported for School Performance Score calculations.

**Attendance Index Calculations [K-8]**

An Attendance Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indexes shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

**Attendance Goals**

	10-Year Goal	20-Year Goal
Grades K-8	95%	98%

**Attendance Index Formula**

Grades K-8  
Indicator (ATT K-8) = (16.667 \* ATT) - 1483.4

Where ATT is the attendance percentage, the Index Formula uses the definition of attendance established by the Louisiana Department of Education.

**Lowest Attendance Index Score**

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

**Dropout Index Calculations**

A Dropout Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's dropout rates. Subsequent years' indices shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

**Dropout Goals**

	<b>10-Year Goal</b>	<b>20-Year Goal</b>
Grades 7 & 8	4%	2%

The national definition of *dropout* shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

**Dropout Index Formulas**

Non-Dropout Rate (NDO) = 100 - Dropout Rate (DO) (expressed as a percentage)

Grades 7 & 8	Dropout Index (7-8) = Indicator (DO Gr 7-8) = (25 * NDO) - 2300.0 NDO = (Indicator DO Gr 7-8 + 2300.0) / 25
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**Lowest Dropout Index Score**

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

**School Performance Scores for 9-12**

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

Every year of student data shall be used as part of a high school's SPS. The school's initial SPS shall be calculated using the most recent year's NRT and CRT test data and the prior year's attendance and dropout rates. Subsequent calculations of the SPS shall use the most recent two years' test data, attendance and dropout rates from the two years prior to the last year of test data used.

**Transition Years [9-12]**

To accommodate the phase-in of the grades 10 and 11 GEE 21 criterion-referenced tests, the Department shall use the following indicators:

Timelines/School Years			Indicators Included				
Cycle	Baseline SPS Data	SPS Data	Grade 9 NRT	Grade 10 CRT	Grade 11 CRT	Attendance	Dropout
1	2000-01	2002-03	✓	✓		✓*	✓*
2	2001-02 & 2002-03 (avg.)	2003-04 & 2004-05 (avg.)	✓	✓	✓	✓*	✓*
3	2003-04 & 2004-05 (avg.)	2005-06 & 2006-07 (avg.)	✓	✓	✓	✓*	✓*

\*Indicates use of prior year data for these indexes.

<sup>1</sup>The SPS at the beginning of cycle 2 shall be calculated using the average of the 2002 and 2003 NRT scores, the average of the 2002 and 2003 CRT scores, and the average of the 2001 and 2002 attendance and dropout data. The SPS for the beginning of cycle 2 shall be compared to the 2001 baseline SPS for determining growth.

**Transition Years [Combination Schools]**

Combination Schools are schools that contain a 10th and/or 11th grade and that also contain a 4th and/or 8th grade.

To accommodate the phase-in of Social Studies and Science components of the CRT tests for Secondary Accountability Cycles, the Department shall use the following LEAP Test components when calculating the SPS for combination schools.

Cycle 1 Baseline SPS for Combination Schools	Cycle 2 SPS for Combination Schools
K-8 portion of school: 2 years averaged (2000 and 2001) of all CRT data	K-8 portion of school: 2 years averaged (2002 and 2003) of all CRT data.
9-12 portion of school: 1 year baseline data (2001) without grade 11 CRT	9-12 portion of school: 2 years averaged (2002 and 2003) of all CRT data.

**Formula for Calculating an SPS – Accountability Cycle 1 (2001) for 9-12 and Combination Schools.**  
 During the first accountability cycle, the SPS for a sample school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is  

$$\text{SPS} = (.60 * \text{Grade 10 CRT Adjusted Achievement Index}) + (.30 * \text{NRT Adjusted Achievement Index}) + (.05 * \text{Dropout Index}) + (.05 * \text{Attendance Index})$$

All intermediate results and the final result shall be rounded to the nearest tenth.

The following is an example of how this calculation shall be made:  

$$[(.60 * 66.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 69.0.$$

Indicator	Index Value	Weight	Indicator Score
CRT—Grade 10	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
<b>SPS</b>			69.0

**Formula for Calculating an SPS – Accountability Cycle 2 (2003 and beyond) for 9-12 and Combination Schools.**  
 During the second accountability cycle, the SPS for a sample school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is  

$$\text{SPS} = (.30 * \text{Grade 10 CRT Adjusted Achievement Index}) + (.30 * \text{Grade 11 CRT Adjusted Achievement Index}) + (.30 * \text{NRT Index}) + (.05 * \text{Dropout Index}) + (.05 * \text{Attendance Index})$$

In this example,  

$$[(.30 * 66.0) + (.30 * 60.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 67.2.$$

Indicator	Index Value	Weight	Indicator Score
CRT—Grade 10	66.0	30%	19.8
CRT—Grade 11	60.0	30%	18.0
NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
<b>SPS</b>			67.2

**Norm-Referenced Tests (NRT) Index Calculations [9-12]**

For the NRT Index, standard scores shall be used for computing the SPS. Index scores for each student shall be calculated, scores totaled, and then averaged together to get a high school's NRT Index score.

**NRT Goals and Equivalent Standard Scores for Grade 9**

Goal	Percentile Rank	Grade 9 Composite Standard Score
10-Year Goal	55th	263
20-Year Goal	75th	287

**NRT Formulas Relating Student Standard Scores to NRT Index [9-12]**

If the 10-Year and 20-Year Goals are the 55th and 75th percentile ranks respectively and if the SS = a student's standard score, the index for a grade 9 student is calculated as follows:

$$\text{Index 9th grade} = (2.083 * \text{SS}) - 447.8$$

$$\text{SS} = (\text{Index 9th grade} + 447.8) / 2.083$$

**Option II students:** those students failing the 8th grade LEAP 21 that have been

- retained and placed on the high school campus
- must take the 9th grade NRT and
- must retake only the part of the 8th grade LEAP 21 they originally failed (English language arts or mathematics).

If, during spring testing, a student receives a score of Approaching Basic (Approaching the Standard) or above on a LEAP 21 test of mathematics or English language arts for which he/she received a score of Unsatisfactory the previous spring, the high school shall receive incentive points in its accountability index. For the 2000-2001 school year, a student may earn a maximum of 100 incentive points in his/her school's accountability index. Beginning cycle 2 (2001-2002), a student may earn a maximum of 50 incentive points for his/her school. (See High Stakes Testing Policy.)

Only with the exception of grade 8 Option II students, all Louisiana students in grades three through eleven will participate in only one of the following state assessments on an annual basis:

- LEAP 21 or,
- GEE 21 or,
- Iowa On-Level or,
- LEAP Alternate Assessment B (LAA-B) or, LEAP Alternate Assessment (LAA)

**Criterion-Reference Tests (CRT) Index Calculations [9-12]**

A high school's CRT Index score at each grade equals the sum of the eligible student totals divided by the number of students eligible to participate in state assessments. For the CRT Index, each student who scores within one of the following five levels shall receive the number of points indicated.

Advanced	200 points
Mastery (Exceeding the Standard)	150 points
Basic (Meeting the Standard)	100 points
Approaching Basic (Approaching the Standard)	50 points
Unsatisfactory	0 points

**Formula for Calculating the NRT and CRT Adjusted Achievement Index for a High School**

1. Sum the number of points earned by all students. For the NRT, there shall be one score for each student: the NRT Index calculated from the student's composite standard score. For the CRT, students shall be taking two tests at each grade.
2. Divide by the total number of students eligible to be tested times the number of content area tests. This calculation provides the raw achievement index for the grade.
3. Multiply the raw index by the product of the non-dropout rates from the previous year, for that grade and for all the previous grades. (See Examples below.) This operation means that the grade 9 NRT Index shall be multiplied by the grade 9 non-dropout rate, the grade 10 CRT Index shall be multiplied by the grade 9 and grade 10 non-dropout rates, and the grade 11 CRT Index shall be multiplied by the grade 9, grade 10 and grade 11 non-dropout rates. This operation shall yield the Adjusted Achievement Index.
4. Zero shall be the lowest NRT or CRT Adjusted Achievement Index score reported for accountability calculations.

The formula for calculating the NRT and CRT Adjusted Achievement Index for a High School is:

$$\text{NRT Adjusted Achievement Index} = \text{Raw Achievement Index} * (1 - \text{DO Gr 9} + .07)$$

$$\text{CRT Adjusted Achievement Index (Gr 10)} = \frac{\text{Raw Achievement Index} * (1 - \text{DO Gr 9} + .07) * (1 - \text{DO Gr 10} + .07)}{(1 - \text{DO Gr 10} + .07)}$$

$$\text{CRT Adjusted Achievement Index (Gr 11)} = \frac{\text{Raw Achievement Index} * (1 - \text{DO Gr 9} + .07) * (1 - \text{DO Gr 10} + .07) * (1 - \text{DO Gr 11} + .07)}{(1 - \text{DO Gr 10} + .07) * (1 - \text{DO Gr 11} + .07)}$$

Example 1 - Grade 9:

- Before beginning grade 9, a class has 50 students; by the end of September, 45 remain in the class. The grade 9 dropout rate is  $(5/50) = .100$ .
- The number of points earned on the NRT is 5000.
- The raw achievement index is  $5000/45 = 111.1$ .
- The adjusted achievement index is  $111.1 * (1 - .100 + .07) = 107.8$ .

Example 2 - Grade 10:

- Another 5 students dropout before October of grade 10. The grade 10 dropout rate is  $5/45 = .111$ .
- The 40 students remaining in the class earn 10,000 points on the two CRT tests. The raw achievement index is  $10,000/(40 * 2) = 125.0$ .
- The adjusted achievement index is  $125.0 * (1 - .100 + .07) * (1 - .111 + .07) = 116.3$ .

**Attendance Index Calculations for Grades 9-12**

An Attendance Index score for each high school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indexes shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

**Attendance Goals**

	<b>10-Year Goal</b>	<b>20-Year Goal</b>
Grades 9-12	93%	96%

**Attendance Index Formula for Grades 9-12**

If the 10-Year and 20-Year Goals are 93% and 96% average attendance respectively and if the ATT = attendance percentage using the definition of attendance established by the Department of Education, the attendance index is calculated as follows:

$$\text{Indicator (ATT 9-12)} = (16.667 * \text{ATT}) - 1450.0$$

Example:

- If the average attendance percentage is 94.3%, the Attendance Index would be  $(16.667 * 94.3) - 1450.0 = 121.7$ .

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

**Dropout Index Calculations for Grades 9-12**

A Dropout Index score for each high school shall be calculated. The initial year's index shall be calculated from the prior year's dropout rates. Subsequent years' indexes shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

**Dropout Goals**

	<b>10-Year Goal</b>	<b>20-Year Goal</b>
Grades 9-12	7%	3%

**Dropout Index Formula for Grades 9-12**

$$\text{Dropout Index} = 187.5 - (12.5 \times \text{dropout rate})$$

Example:

If the dropout rate is 4.5%, the Dropout Index would be  $187.5 - (12.5 * 4.5) = 131.3$ .

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

The national definition of *dropout* shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

**Performance Labels**

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

The Louisiana Department of Education shall calculate two state averages. A state average shall be calculated for K-8 schools and a state average shall be calculated for 9-12, K-12 and combination schools.

**Performance Labels**

A school is Academically Unacceptable if it has an SPS < 45.0 points in 2003 and an SPS < 60.0 points in 2005.

Beginning 2003, any Academically Unacceptable school immediately enters Corrective Actions II.

A school that is not Academically Unacceptable but has a SPS < the State Average shall be labeled Academically Below the State Average.

A school that is not Academically Unacceptable but has a SPS < 100.0 points but >the State Average shall be labeled Academically Above the State Average.

\*\*A school with a SPS of 100.0 - 124.9 shall be labeled a *School of Academic Achievement*

\*\*A school with a SPS of 125.0 - 149.9 shall be labeled a *School of Academic Distinction*.

\*\*A school with a SPS of 150.0 or above shall be labeled a *School of Academic Excellence*.

\*\*During the first ten years, a school with these labels shall no longer be subject to Corrective Actions and shall not receive "negative" growth labels. (See Standard 2.006.06.) This school shall continue to meet or exceed its Growth Target to obtain a "positive" growth label, recognition, and possible rewards.

**Corrective Actions**

2.006.09 A school shall enter in Corrective Actions I if any of the following apply:

- It is Academically Below the applicable State Average and it did not make its Growth Target, or
- It is Academically Above the applicable State Average and has a Growth Label of *School in Decline* or *No Growth*.

A school that enters Corrective Actions shall receive additional support and assistance, with the expectation that extensive efforts shall be made by students, parents,

teachers, principals, administrators, and the school board to improve student achievement at the school. There shall be three levels of Corrective Actions.

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

Requirements for Schools in Corrective Actions I

*I. A Revised or New School Improvement Plan*

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

- a. a statement of the school's beliefs, vision, and mission;
- b. a comprehensive needs assessment that shall include the following quantitative and qualitative data:
  - student academic performances on standardized achievement test s (both CRT and NRT) and performance/authentic assessment disaggregated by grade vs. content vs. exceptionality);

<ul style="list-style-type: none"> <li>•demographic indicators of the community and school to include socioeconomic factors;</li> <li>•school human and material resource summary, to include teacher demographic indicators and capital outlay factors;</li> <li>•interviews with stakeholders: principals, teachers, students, parents;</li> <li>•student and teacher focus groups;</li> <li>•questionnaires with stakeholders (principals, teachers, students, parents) measuring conceptual domains outlined in school effectiveness/reform research;</li> <li>•classroom observations;</li> </ul> <p>c. measurable objectives and benchmarks;</p> <p>d. effective research-based methods and strategies;</p> <p>e. parental and community involvement activities;</p> <p>f. professional development component aligned with assessed needs;</p> <p>g. external technical support and assistance;</p> <p>h. evaluation strategies;</p> <p>i. coordination of resources and analysis of school budget (possible redirection of funds);</p> <p>j. action plan with time lines and specific activities.</p> <p><i>2. Assurance pages</i> Each school in Corrective Actions I shall be required to provide assurances that it worked with a District Assistance Team to develop its School Improvement Plan, and that the plan has the essential components listed above. Signatures of the team members shall also be required.</p> <p><i>3. A quarterly Monitoring of the Implementation of the School Improvement Plan</i> District Assistance Teams shall assist schools in Corrective Actions I in monitoring the implementation of their School Improvement Plan. All schools in Corrective Actions I shall be required to submit to the Louisiana Department of Education a quarterly report on the implementation of their school improvement plan in paper and/or electronic format.</p> <p><i>4. An Annual Evaluation of the Level of Implementation of the School Improvement Plan</i> This evaluation shall be required on an annual basis. The Louisiana Department of Education shall make every effort to see that the information is collected in a manner that shall be of assistance to the schools and that shall provide feedback to them as they strive to improve student achievement.</p>
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<p>A school shall enter Corrective Actions Level II if:</p> <ul style="list-style-type: none"> <li>• It is Academically Unacceptable.</li> </ul> <p>A school shall remain in Corrective Actions Level II if: It is Academically Unacceptable, made its Growth Target, and it was in Corrective Actions II the previous cycle.</p>
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<p>Corrective Actions Level II: All schools in Corrective Actions II are labeled Academically Unacceptable. All schools in Corrective Actions II must adhere to the requirements of schools in Corrective Actions I; however, Corrective Actions II schools must submit to the Louisiana Department of Education a <i>Monthly Monitoring of the Implementation of the School Improvement Plan</i>.</p> <p>Corrective Actions Level II: A highly trained Distinguished Educator (DE) shall be assigned to a school by the State. The DE shall work in an advisory capacity to help the school improve student performance. The DE shall make a public report to the school board of recommendations for school improvement. Districts shall then publicly respond to these recommendations. Parents shall have the right to transfer their child to a higher performing public school. (See Transfer Policy Standard #2.006.11.)</p> <p><b><i>Corrective Actions Level II schools that do not attain at least 40% of their growth in the interim year shall provide State Approved Supplemental Service within 60 days of the release of the interim SPSs.</i></b></p>
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<p>A school shall enter Corrective Actions Level III if: it was in Corrective Actions Level II the previous cycle, and Academically Unacceptable and it did not make its Growth Target.</p>
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<p>Corrective Actions Level III: The DE shall continue to serve the school in an advisory capacity. Parents shall have the right to transfer their child to a higher performing public school. (See Transfer Policy, Standard #2.006.11.) A district must develop a Reconstitution Plan for the school at the beginning of the first year in this level and submit the plan to the SBESE for approval by February.</p> <p>If a Corrective Actions Level III school has not achieved at least 40% of its Growth Target at the end of the first year and SBESE has approved its Reconstitution Plan, then the school shall implement the Reconstitution Plan during the beginning of the next school year. If the SBESE does not approve the Reconstitution Plan AND a given school does not meet the required minimum growth, the school shall lose its State approval and all State funds.</p> <p>Any reconstituted School's SPS and Growth Target shall be re-calculated utilizing data from the end of its previous year. The SBESE shall monitor the implementation of the Reconstitution Plan.</p>
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### Movement in Corrective Actions

All schools that:

- Have a SPS  $\geq 100.0$  are exempt from Corrective Actions I, II, and III during the first ten years.
- Are not Academically Unacceptable and meet or exceed their Growth Targets shall exit Corrective Actions I.
- Have a SPS  $\geq$  the applicable State Average but  $< 100.0$  must make some growth (0.1 pts) or enter/remain in Corrective Actions I.
- Are not Academically Unacceptable but have a SPS  $<$  the applicable State Average must make their Growth Targets or enter/remain in Corrective Actions I.
- Are Academically Unacceptable shall enter in Corrective Actions Level II.
- Are Academically Unacceptable and make their Growth Targets, but remain Academically Unacceptable, shall remain in Corrective Actions II.
- Are Academically Unacceptable and did not make their Growth Targets, but remain Academically Unacceptable, shall enter Corrective Actions Level III.

Determination of Academically Unacceptable schools in 2003 shall be based on the higher of two School Performance Scores: one using an average of the 2001-02 and 2002-03 accountability data, and the other using the 2002-2003 accountability data only.

### Corrective Actions Summary Chart

#### School Level Tasks

##### Level I

- 1) Utilize the State's diagnostic process or another process meeting State approval to identify needs; and
- 2) Work with District Assistance Team to develop/implement a consolidated improvement plan, including an integrated budget the process must include a) opportunities for significant parent and community involvement, b) public hearings, and c) at least two-thirds teacher approval

##### Level II

- 1) Continue to adhere to the requirements of Corrective Actions Level I schools;
- 2) Work with advisory Distinguished Educator, teachers, parents, and others to implement revised School Improvement Plan; and
- 3) Distinguished Educator works with principals to develop capacity for change

##### Level III

- 1) Continue to adhere to the requirements of Corrective Actions Level I schools;
- 2) Distinguished Educator continues to assist with improvement efforts and work with the advisory District Assistance Team and other district personnel to design that school's Reconstitution Plan or No State Approval/No State Funding.
- 3) If Reconstitution Plan is approved by the SBESE: a) implement Reconstitution Plan, and b) utilize data from the end of the previous year to re-calculate school performance goals and Growth Targets
- 4) If Reconstitution Plan is not approved, no State approval/no State funding.

#### District Level Tasks

##### Level I

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

##### Level II

- 1) Continue to help schools through the use of District Assistance Teams;
  - 2) Hold public hearing and respond to Distinguished Educator's written recommendations;
  - 3) Response in writing submitted to SBESE by local boards no later than 45 days subsequent to receiving the Distinguished Educator's report. Failure to respond to these recommendations will result in the school receiving unapproved status and being ineligible to receive federal subgrantee assistance funds until such response is received;
  - 4) Reassign or remove personnel as necessary as allowed by law; and
- Notify parents of their right to send their children to another public schools no later than 120 days after a school is identified for Corrective Actions II for the subsequent year (Ref. 2.006.11); and
- Offer state approved supplemental services to students in schools that do not meet 40 percent of their Growth Targets no later than 60 days after the release of the interim year SPS.



Level III  
 1) Continue to help schools through the use of District Assistance Teams;  
 Continue notifying parents of students attending Academically Unacceptable Schools to send their children to other public schools;  
 3) Design Reconstitution Plan and submit to the SBESE by February; and  
 At the end of year one, one of the following must occur: a) schools must make adequate growth of at least 40 percent of the Growth Target b) the district implements the Reconstitution Plan approved by the SBESE; and c) the SBESE shall grant non-school approval status; and  
 5) Continue to offer state approved supplemental services.  
 Reconstitution or No State Approval/Funding  
 If Reconstitution Plan is approved by the SBESE, provide implementation support.  
 If the Reconstitution Plan is not approved, no State approval/no State funding.

**State Level Tasks**

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

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

Level III  
 1) Assign advisory Distinguished Educator to schools for one additional year to assist in the development and design of the Reconstitution Plan;  
 2) At end of Year 1, the SBESE shall approve or disapprove Reconstitution Plans. If the SBESE approves the Reconstitution Plan, the Distinguished Educator is assigned an additional year to support and assist with monitoring the implementation of the Reconstitution Plan for schools that fail to make adequate growth;  
 3) If a school achieves the required amount of growth during its first year in Level III Corrective Action and proceeds to a second year in Level III, the Distinguished Educator will be assigned to the school for that additional year to support and assist the school in its continued improvements efforts; and  
 4) Work to secure new funding and/or redirect existing resources to help schools implement their improvement plans  
 Reconstitution or No State Approval/No Funding  
 1) If Reconstitution Plan is approved by the SBESE, a) monitor implementation of reconstitution plan; and b) provide additional state improvement funds; and  
 2) If Reconstitution Plan is not approved, no State approval/State funding

**Reconstitution Plan**

**2.006.10** Districts shall develop and submit a Reconstitution Plan to the SBESE for approval for any school in Corrective Actions Level III during the first year in that level (by February). This Reconstitution Plan indicates how the district shall remedy the school's inadequate growth in student performance. The plan shall specify how and what reorganization shall occur and how/why these proposed changes shall lead to improved student performance.

If a Corrective Actions Level III school has not achieved at least 40 percent of its Growth Target and SBESE has

approved its Reconstitution Plan, then the school shall implement the Reconstitution Plan during the beginning of the next school year. If the SBESE does not approve the Reconstitution Plan and a given school does not meet the required minimum growth, the school shall lose State approval and all State funds.

**School Choice**

**2.006.11** Parents shall have the right to transfer their child to another public school when the school in which their child is enrolled enters Corrective Actions II. This School choice is offered the following school year.

Beginning 2003-04, no later than 120 days after a school has been identified for Corrective Actions II, an LEA shall notify parents of their School Choice options for the following school year.

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

Upon parental request, districts shall transfer the child to the nearest acceptable school.

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

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

An LEA must develop a policy for student transfers (School Choice Policy) for schools in Corrective Actions II and III. An LEA shall state its capacity for offering student transfers. The SBESE shall approve or disapprove an LEA's School Choice Policy.

An LEA shall declare *Lack of Capacity* when all of the attendance zones under its jurisdiction are unable to provide school choice to eligible students (i.e., desegregation order).

An LEA shall declare *Limited Capacity* when some students in some or all of the attendance zones under its jurisdiction may be provided school choice in an attendance zone (i.e., limited seating capacity in receiving schools).

An LEA declaring *Lack or Limited Capacity* shall request a waiver from the SBESE and shall submit the following with its waiver request:

- a description of the general transfer policy or desegregation order (See State's *Guidance on LEAs' Development of School Choice Policies for Public Schools in Louisiana*. Transfer policies must include:
  - 1) a method for determining transfer capacity or evidence of lack of capacity to transfer;
  - 2) transfer options for as many eligible students as possible in the Academically Unacceptable schools in Corrective Actions II or III to other Academically Acceptable schools;
  - 3) equal educational opportunities for all students eligible to transfer, including students with disabilities and Limited English Proficiency (LEP) and in compliance with all civil rights laws pertaining to eligible students;
  - 4) a method for selecting transfer students from the entire eligible student population in cases of *Limited Capacity* (i.e., lottery);
  - 5) a method for communicating to parents the option and wherewithal of School Choice;
  - 6) a method for maintaining a file for all communication involving all interested parties in School Choice;
  - 7) A method for providing transportation for transfer students; and
  - 8) A method for transferring student records, including assessment results and their interpretations.

If the SBESE determines that an LEA has demonstrated sufficient evidence of lack of or limited capacity to transfer, then the requesting LEA must submit the following information for the SBESE's approval:

- a description of the School/District Plan for those schools having to offer School Choice that addresses the following:
  - 1) Educator Quality
    - Principal Certification/Qualifications
    - Principal Leadership and Effectiveness
    - Teacher Qualifications/Certification
  - 2) Professional Development
    - To address teacher professional learning based on student data
    - To address uncertified/inexperienced teacher professional learning if certified/experienced teachers are unavailable for placement in the school
  - 3) Alignment of Curriculum, Instruction and Assessment with State Content Standards;
  - 4) Teacher/Pupil Ratio;
  - 5) Early Intervention/Remediation Programs;
  - 6) Time on Task/Extended Learning Opportunities;
  - 7) Parental Involvement; and
  - 8) Discipline/Safety/Health Issues;
  - 9) Renovation/Capital Improvement.

If the SBESE approves an LEA's School Choice Policy, the LEA must comply with the following conditions:

- 1) The LEA must submit a quarterly status report to the SBESE regarding the implementation and progress of the district's School Choice policy.
- 2) The LEA's School Choice Policy will be reviewed, re-evaluated, and subject to amendment or revision annually, all at the discretion of the SBESE.
- 3) The LEA must formally approve (and provide to the SBESE written proof thereof) the following:
  - a. the implementation of the School Choice Policy submitted to the SBESE; and
  - b. the assurance that as a part of its approval of the School Choice Policy the Superintendent (or interim Superintendent), or his/her designee, shall be the sole decision maker with regard to the assignment, removal, or replacement of all personnel involved, directly or indirectly, in the administration and implementation of the School Choice policy including personnel in the central office and relevant schools covered by the plan.
- 4) In the event that the LEA uses preliminary data supplied by the LDE or testing contractor and determines in good faith that a school is not required by state or federal law to provide choice to students, but final School Performance Scores (as determined by the LDE) would require the school provide choice, the LEA shall provide choice (in accordance with the provisions of the approved School Choice Plan) at the end of the school year in which the final SPS are determined by the LDE.

If the SBESE fails to approve an LEA's School Choice Plan, the implicated schools will lose their School Approval status.

### Progress Report

**2.006.12** The SBESE shall report annually on the State's progress in reaching its 10- and 20-Year Goals. The Louisiana Department of Education shall publish individual school reports to provide information on every school's performance. The school reports shall include the following information: School Performance Scores and school progress in reaching Growth Targets. Beginning fall 2002,

the LDE shall report subgroup performance to schools for the following subgroups: Poverty, Special Education, Ethnicity (White, Black, Hispanic, Asian/Pacific Islander, American Indian/Alaskan Native), and Limited English Proficient (LEP).

Weegie Peabody  
Executive Director

0303#015

**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 it pertains to the appeals and waiver process and the inclusion of new schools and/or significantly reconfigured schools in the accountability system.

**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 LR 28:269, 272 (February 2002), LR 28:991, (May 2002), LR 28:1187 (June 2002), LR 29:299 (March 2003).

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**The Louisiana School and District  
 Accountability System  
 School Performance Scores**

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

New schools with one year of test data shall be included in accountability. For attendance and dropout data, LEA's shall have the option of using

- the district average for schools in the same category as the new school
- data from the prior year, if whole grade levels from an existing school or schools moved to the new school.

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

- a score for regular education students, including gifted, talented, and Section 504 students.
- a score including regular education students AND students with disabilities eligible to participate in the CRT and/or NRT tests.

For the purpose of determining Academically Unacceptable Schools, during the summer of 1999 for K-8 schools, the School Performance Score that includes only regular education students shall be used.

**Formula for Calculating an SPS [K-6]**

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

<i>Indicator</i>	<i>Index Value</i>	<i>Weight</i>	<i>Indicator Score</i>
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance	50.0	10%	5.0
Dropout	N/A	0%	0
			SPS = 67.1

**Criterion-Referenced Tests (CRT) Index Calculations [K-8]**

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

Advanced =	200 points
Mastery (Exceeding the Standard) =	150 points
Basic (Meeting the Standard) =	100 points
Approaching Basic (Approaching the Standard) =	50 points
Unsatisfactory =	0 points

**Formula for Calculating a CRT Index for a School [K-8]**

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

**Option I students:** those students failing the 8th grade LEAP 21 that have been

- retained on the 8th grade campus
- must retake all parts of the 8th grade LEAP 21

If, during spring testing, a repeating fourth grade student or Option I 8th grade student receives a score of Approaching Basic (Approaching the Standard) or above on a LEAP 21 test of mathematics, English language arts, science or social studies for which he/she received a score of Unsatisfactory the previous spring, the retaining school shall receive 50 incentive points per subject in its accountability index. A student may earn a maximum of 200 incentive points for his/her school. (No incentive points will be awarded for passing parts of tests in the summer school of the year they first failed in spring testing.)

**Transition Years [K-8]**

To accommodate the phase-in of the Social Studies and Science components of the CRT for Elementary and Secondary Accountability Cycles, the State Department of Education shall use following LEAP Test components when calculating the School Performance Scores (SPS) for K-8:

Timelines/School Years			LEAP-CRT Index Components							
Cycle	Baseline SPS Data	Growth SPS Data	Grade							
			4				8			
			ELA	Math	Science	Social Studies	ELA	Math	Science	Social Studies
1	1998-1999	2000-2001	✓	✓			✓	✓		
2	1999-2000 & 2000-2001	2001-2002 & 2002-2003	✓	✓	✓	✓	✓	✓	✓	✓
3	2001-2002 & 2002-2003	2003-2004 & 2004-2005	✓	✓	✓	✓	✓	✓	✓	✓

**Norm-Referenced Tests (NRT) Index Calculations [K-8]**

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

**NRT Goals and Equivalent Standard Scores**

Composite Standard Scores Equivalent to Louisiana's 10- and 20-Year goals, by Grade Level \*

Grade					
Goals	Percentile Rank	3	5	6	7
10-Year Goal	55th	187	219	231	243
20-Year Goal	75th	199	236	251	266

**NRT Formulas Relating Student Standard Scores to NRT Index [K-8]**

Where the 10-year and 20-year goals are the 55th and 75th percentile ranks, respectively, and where SS = a student's standard score, then the index for that student is calculated as follows:

Grade 3	Index 3rd grade = (4.167 * SS) - 679.2 SS = (Index 3rd grade + 679.2)/4.167
Grade 5	Index 5th grade = (2.941 * SS) - 544.1 SS = (Index 5th grade + 544.1)/2.941
Grade 6	Index 6th grade = (2.500 * SS) - 477.5 SS = (Index 6th grade + 477.5)/2.500
Grade 7	Index 7th grade = (2.174*SS) - 428.3 SS= (Index 7th grade + 428.3)/2.174

**Formula for Calculating a School's NRT Index [K-8]**

1. Calculate the index for each student, using the grade-appropriate formula relating the Standard Score to NRT Index. (NOTE: For accountability purposes, a student not taking the test and not exempted will be assigned a zero NRT index.)
2. Sum the total number of NRT Index points for all grades in the school.
3. Divide the sum of the NRT Index points by the total number of students eligible to be tested plus the number of students not exempted.
4. Zero shall be the lowest NRT Index score reported for School Performance Score calculations.

**Attendance Index Calculations [K-8]**

An Attendance Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indexes shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

**Attendance Goals**

	10-Year Goal	20-Year Goal
Grades K-8	95%	98%
Attendance Index Formula		
Grades K-8 Indicator (ATT K-8) = (16.667 * ATT) - 1483.4		
Where ATT is the attendance percentage, the Index Formula uses the definition of attendance established by the Louisiana Department of Education.		

**Lowest Attendance Index Score**

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

**Dropout Index Calculations**

A Dropout Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's dropout rates. Subsequent years' indices shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

**Dropout Goals**

	10-Year Goal	20-Year Goal
Grades 7 & 8	4%	2%

The national definition of *dropout* shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

**Dropout Index Formulas**

Non-Dropout Rate (NDO) = 100 - Dropout Rate (DO) (expressed as a percentage)	
Grades 7 & 8	Dropout Index (7-8) = Indicator (DO Gr 7-8) = (25 * NDO) - 2300.0 NDO = (Indicator DO Gr 7-8 + 2300.0) / 25

**Lowest Dropout Index Score**

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

**School Performance Scores for 9-12**

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

Every year of student data shall be used as part of a high school's SPS. The school's initial SPS shall be calculated using the most recent year's NRT and CRT test data and the prior year's attendance and dropout rates. Subsequent calculations of the SPS shall use the most recent two years' test data, attendance and dropout rates from the two years prior to the last year of test data used.

<b>Transition Years [9-12]</b>							
To accommodate the phase-in of the grades 10 and 11 GEE 21 criterion-referenced tests, the Department shall use the following indicators:							
<b>Timelines/School Years</b>			<b>Indicators Included</b>				
<b>Cycle</b>	<b>Baseline SPS Data</b>	<b>SPS Data</b>	<b>Grade 9 NRT</b>	<b>Grade 10 CRT</b>	<b>Grade 11 CRT</b>	<b>Attendance</b>	<b>Dropout</b>
1	2000-01	2002-03	✓	✓		✓*	✓*
2	2001-02 & 2002-03 (avg.)	2003-04 & 2004-05 (avg.)	✓	✓	✓	✓*	✓*
3	2003-04 & 2004-05 (avg.)	2005-06 & 2006-07 (avg.)	✓	✓	✓	✓*	✓*

\*Indicates use of prior year data for these indexes.  
<sup>1</sup>The SPS at the beginning of cycle 2 shall be calculated using the average of the 2002 and 2003 NRT scores, the average of the 2002 and 2003 CRT scores, and the average of the 2001 and 2002 attendance and dropout data. The SPS for the beginning of cycle 2 shall be compared to the 2001 baseline SPS for determining growth.

<b>Transition Years [Combination Schools]</b>	
Combination Schools are schools that contain a 10th and/or 11th grade and that also contain a 4th and/or 8th grade.	
To accommodate the phase-in of Social Studies and Science components of the CRT tests for Secondary Accountability Cycles, the Department shall use the following LEAP Test components when calculating the SPS for combination schools.	
<b>Cycle 1 Baseline SPS for Combination Schools</b>	<b>Cycle 2 SPS for Combination Schools</b>
K-8 portion of school: 2 years averaged (2000 and 2001) of all CRT data	K-8 portion of school: 2 years averaged (2002 and 2003) of all CRT data.
9-12 portion of school: 1 year baseline data (2001) without grade 11 CRT	9-12 portion of school: 2 years averaged (2002 and 2003) of all CRT data.

<b>Formula for Calculating an SPS – Accountability Cycle 1 (2001) for 9-12 and Combination Schools.</b>			
During the first accountability cycle, the SPS for a sample school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is			
$\text{SPS} = (.60 * \text{Grade 10 CRT Adjusted Achievement Index}) + (.30 * \text{NRT Adjusted Achievement Index}) + (.05 * \text{Dropout Index}) + (.05 * \text{Attendance Index})$			
All intermediate results and the final result shall be rounded to the nearest tenth.			
The following is an example of how this calculation shall be made: $[(.60 * 66.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 69.0.$			
<b>Indicator</b>	<b>Index Value</b>	<b>Weight</b>	<b>Indicator Score</b>
CRT—Grade 10	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
<b>SPS</b>			<b>69.0</b>
<b>Formula for Calculating an SPS – Accountability Cycle 2 (2003 and beyond) for 9-12 and Combination Schools.</b>			
During the second accountability cycle, the SPS for a sample school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is			
$\text{SPS} = (.30 * \text{Grade 10 CRT Adjusted Achievement Index}) + (.30 * \text{Grade 11 CRT Adjusted Achievement Index}) + (.30 * \text{NRT Index}) + (.05 * \text{Dropout Index}) + (.05 * \text{Attendance Index})$			
In this example, $[(.30 * 66.0) + (.30 * 60.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 67.2.$			
<b>Indicator</b>	<b>Index Value</b>	<b>Weight</b>	<b>Indicator Score</b>
CRT—Grade 10	66.0	30%	19.8
CRT—Grade 11	60.0	30%	18.0
NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
<b>SPS</b>			<b>67.2</b>

<b>Norm-Referenced Tests (NRT) Index Calculations [9-12]</b>		
For the NRT Index, standard scores shall be used for computing the SPS. Index scores for each student shall be calculated, scores totaled, and then averaged together to get a high school's NRT Index score.		
<b>NRT Goals and Equivalent Standard Scores for Grade 9</b>		
<b>Goal</b>	<b>Percentile Rank</b>	<b>Grade 9 Composite Standard Score</b>
10-Year Goal	55th	263
20-Year Goal	75th	287

<b>NRT Formulas Relating Student Standard Scores to NRT Index [9-12]</b>	
If the 10-Year and 20-Year Goals are the 55th and 75th percentile ranks respectively and if the SS = a student's standard score, the index for a grade 9 student is calculated as follows:	
Index 9th grade = (2.083 * SS) – 447.8	
SS = (Index 9th grade + 447.8)/2.083	

<p><b>Option II students:</b> those students failing the 8th grade LEAP 21 that have been</p> <ul style="list-style-type: none"> <li>retained and placed on the high school campus</li> <li>must take the 9th grade NRT and</li> <li>must retake only the part of the 8th grade LEAP 21 they originally failed (English language arts or mathematics).</li> </ul> <p>If, during spring testing, a student receives a score of Approaching Basic (Approaching the Standard) or above on a LEAP 21 test of mathematics or English language arts for which he/she received a score of Unsatisfactory the previous spring, the high school shall receive incentive points in its accountability index. For the 2000-2001 school year, a student may earn a maximum of 100 incentive points in his/her school's accountability index. Beginning cycle 2 (2001-2002), a student may earn a maximum of 50 incentive points for his/her school. (See High Stakes Testing Policy.)</p>
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<p>Only with the exception of grade 8 Option II students, all Louisiana students in grades three through eleven will participate in only one of the following state assessments on an annual basis:</p> <ul style="list-style-type: none"> <li>LEAP 21 or,</li> <li>GEE 21 or,</li> <li>Iowa On-Level or,</li> <li>LEAP Alternate Assessment B (LAA-B) or,</li> <li>LEAP Alternate Assessment (LAA)</li> </ul>
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<b>Criterion-Referenced Tests (CRT) Index Calculations [9-12]</b>	
A high school's CRT Index score at each grade equals the sum of the eligible student totals divided by the number of students eligible to participate in state assessments. For the CRT Index, each student who scores within one of the following five levels shall receive the number of points indicated.	
Advanced	200 points
Mastery (Exceeding the Standard)	150 points
Basic (Meeting the Standard)	100 points
Approaching Basic (Approaching the Standard)	50 points
Unsatisfactory	0 points

<p><b>Formula for Calculating the NRT and CRT Adjusted Achievement Index for a High School</b></p> <ol style="list-style-type: none"> <li>Sum the number of points earned by all students. For the NRT, there shall be one score for each student: the NRT Index calculated from the student's composite standard score. For the CRT, students shall be taking two tests at each grade.</li> <li>Divide by the total number of students eligible to be tested times the number of content area tests. This calculation provides the raw achievement index for the grade.</li> <li>Multiply the raw index by the product of the non-dropout rates from the previous year for that grade and for all the previous grades. (See examples below.) This operation means that the grade 9 NRT Index shall be multiplied by the grade 9 non-dropout rate, the grade 10 CRT Index shall be multiplied by the grade 9 and grade 10 non-dropout rates, and the grade 11 CRT Index shall be multiplied by the grade 9, grade 10 and grade 11 non-dropout rates. This operation shall yield the Adjusted Achievement Index.</li> <li>Zero shall be the lowest NRT or CRT Adjusted Achievement Index score reported for accountability calculations.</li> </ol> <p>The formula for calculating the NRT and CRT Adjusted Achievement Index for a High School is:  NRT Adjusted Achievement Index = Raw Achievement Index * (1-DO Gr 9 + .07)  CRT Adjusted Achievement Index (Gr 10) = Raw Achievement Index * (1-DO Gr 9 + .07) * (1-DO Gr 10 + .07)  CRT Adjusted Achievement Index (Gr 11) = Raw Achievement Index * (1-DO Gr 9 + .07) * (1-DO Gr 10 + .07) * (1-DO Gr 11 + .07)</p> <p>Example 1 - Grade 9:</p> <ul style="list-style-type: none"> <li>Before beginning grade 9, a class has 50 students; by the end of September, 45 remain in the class. The grade 9 dropout rate is  <math>(5/50) = .100.</math></li> <li>The number of points earned on the NRT is 5000.</li> <li>The raw achievement index is  <math>5000/45 = 111.1.</math></li> <li>The adjusted achievement index is  <math>111.1 \times (1 - .100 + .07) = 107.8.</math></li> </ul>
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Example 2 - Grade 10:

- Another 5 students dropout before October of grade 10. The grade 10 dropout rate is  $5/45 = .111$ .
- The 40 students remaining in the class earn 10,000 points on the two CRT tests. The raw achievement index is  $10,000/(40 * 2) = 125.0$ .
- The adjusted achievement index is  $125.0 * (1 - .100 + .07) * (1 - .111 + .07) = 116.3$ .

**Attendance Index Calculations for Grades 9-12**  
 An Attendance Index score for each high school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indexes shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

Attendance Goals		
	10-Year Goal	20-Year Goal
Grades 9-12	93%	96%

**Attendance Index Formula for Grades 9-12**  
 If the 10-Year and 20-Year Goals are 93% and 96% average attendance respectively and if the ATT = attendance percentage using the definition of attendance established by the Department of Education, the attendance index is calculated as follows:

$$\text{Indicator (ATT 9-12)} = (16.667 * \text{ATT}) - 1450.0$$

Example:

- If the average attendance percentage is 94.3%, the Attendance Index would be  $(16.667 * 94.3) - 1450.0 = 121.7$ .

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

**Dropout Index Calculations for Grades 9-12**  
 A Dropout Index score for each high school shall be calculated. The initial year's index shall be calculated from the prior year's dropout rates. Subsequent years' indexes shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

Dropout Goals		
	10-Year Goal	20-Year Goal
Grades 9-12	7%	3%

**Dropout Index Formula for Grades 9-12**  

$$\text{Dropout Index} = 187.5 - (12.5 * \text{dropout rate})$$

Example:

If the dropout rate is 4.5%, the Dropout Index would be  $187.5 - (12.5 * 4.5) = 131.3$ .

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

The national definition of *dropout* shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

**Appeals Procedures**

**2.006.13** An appeal/waiver procedure has been authorized by the State Board of Elementary and Secondary Education (SBESE) and shall be used to address unforeseen and aberrant factors impacting schools in Louisiana.

The Department shall review appeal/waiver requests and make recommendations to the SBESE within sixty days, beginning the last day of the appeals/waiver filing period. Within this interval, the Department shall notify LEAs of its recommendations and allow them to respond in writing. The Department's recommendations and LEA responses will be forwarded to SBESE for final disposition.

An *appeal* is generally defined as a request for the calculation or recalculation of the School Performance Score (SPS), and/or SPS baseline and Growth Target.

A *waiver* is generally defined as a temporary "withholding" of accountability decisions for no more than one accountability cycle. Waivers shall be denied to aggrieved parties attempting to subvert the intent of provisions outlined in the state statute.

**General Guidelines: Parent/School-Level Requests**

Parents or individual schools seeking an appeal or waiver on issues relating to Louisiana's District and School Accountability System shall file their requests, regardless of the type, through the Superintendent, or appointed representative as authorized by the local governing board of education.



### General Guidelines: Local Board of Education-Level Requests

The Superintendent or official representative of each local governing board of education shall complete the LDE's Appeals/Waivers Request Form and provide supporting documentation to the Division of School Standards, Accountability, and Assistance no later than 30 calendar days after the official release of the School Performance Scores in the fall of each year.

Data corrections shall be grounds for an appeal or waiver request when (a) evidence attributes data errors to the LDE and/or those contractors used for the student assessment program, and/or (b) evidence attributes errors to the LEA and corrections result in a change in Rewards or Corrective Actions status. Requests concerning either the inclusion or exclusion of special education student scores in the calculations of a school's SPS and Growth Target, except as outlined in *Bulletin 741*, shall not be considered by the LDE.

Supporting documentation for appeal/waiver requests should clearly outline those data that are erroneous. Further, computations by the local board of education's officials should provide evidence that the school's SPS is significantly affected by the data in question and that corrections impact Rewards, or Corrective Actions status. The local school system shall be responsible for supplying the LDE with information necessary for recalculating a school's SPS, per LDE instructions.

### Criteria for Appeal

LEA superintendents shall notify the LDE in writing of any changes to existing school configurations, changes to Option status for Alternative schools or pair/share status during the LDE Accountability Status Verification process **prior to** the calculation of the School Performance Scores. Fall SPS calculations shall be made using the information provided to the LDE in the following instances.

1. The student population in a school significantly increases by greater than or equal to ten percent as a result of students transferring into the school from outside of the district (Ref. 2.006.14).
2. An Alternative School changes its Option status by meeting the eligibility requirements outlined in *Bulletin 741*, Section 1.006.14.
3. A school's (inclusive of those paired or shared) enrollment has significantly changed by fifty percent or more from the previous academic year as a result of redistricting by the local governing board or education (Ref. 2.006.15).

The LDE shall provide a report to SBESE of all configuration, pair/share, or Alternative Option status changes.

If an LEA does not submit changes to school status to the LDE during the Accountability Status Verification process, the LEA may petition SBESE during the Appeals timeframe, after the SPS release. LEAs may petition SBESE in instances not addressed by policy or in instances when the policy is unclear.

An LEA shall inform the LDE during the Accountability Status Verification process (Ref. 2.006.13) of schools within the district that have been closed. An appeal shall be filed by the LEA to receive monetary rewards for any eligible closed school.

### Criteria for Waiver

1. The recalculated SPS baseline of a school changes by five points (+/-5) as a result of a significant change of ten percent or more in the student population because of students transferring into the school from outside of the district (Ref. 2.006.14).
2. Factors beyond the reasonable control of the local governing board of education and also beyond the reasonable control of the school exist.
3. A school lacks the statistically significant number of testing units for the CRT (80 units) and NRT (20 units) necessary to calculate the SPS and has no systematic "feeding" pattern into another school by which data could be "shared" (Ref. 2.006.15) because the school is
  - a Lab School;
  - a Type 1, 2, or 3 Charter School;
  - operated by the Department of Corrections; or
  - beyond the sovereign borders of Louisiana;
  - an SSD #1 or #2 school;
  - a SBESE school;
  - non-diploma bound school.
4. The student body of the school (Pre-K through K-2) comprises primarily Pre-K and K students (greater than fifty percent of the total student membership) and has no systematic "feeding" pattern into another school or schools by which it could be "paired" (Ref. 2.006.15). A feeding pattern is defined as the plan used by local governing boards of education to transfer students from one school to another for educational services as a result of pupil progression into higher grades.

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

**2.006.16** For a newly formed school, the school district shall register the new school with the Louisiana Department of Education to have a site code assigned to that school. A

new school shall not be created nor shall a new site code be issued in order to prevent a school from entering the Accountability System. Before a new school is created, the Local Education Authority must work with the Louisiana Department of Education to explore ways the new school can be included in the Accountability System.

When two or more schools are created from an existing school (e.g., Grades 4-6 "split" from an existing K-6 structure, creating a K-3 school and a 4-6 school), the existing site code stays with the school that contributed most to the original SPS (as determined by the LDE), and the "new" school shall receive a new site code. New schools with one year of test data shall be included in accountability. For attendance and dropout data, LEA's will have the option of using (a) the district average for schools in the same category as the new school or (b) data from the prior year, if whole grade levels from an existing school or schools moved to the new school.

Reconfigured Schools

- A reconfigured school shall retain its rewards and/or Corrective Actions status if 50% or more of the students remain at the school;
- A reconfigured school shall transfer its rewards and/or Corrective Actions status if 50% or more of the students transfer to another school;

Weegie Peabody  
Executive Director

0303#016

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 1965C English Language Arts Content Standards  
(LAC 28:LXIII.Chapters 1-7)

Editor's Note: Bulletin 1965 has been moved to Part LXIII of Title 28 and is printed in its entirety to show the new codification.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revision of Bulletin 1965, *Louisiana English Language Arts Content Standards*, referenced in LAC 28:1.930.E, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The *Louisiana English Language Arts Content Standards* will be disseminated to local school districts following publication. Implementation of the changes to the wording in the standards and benchmarks clarify and strengthen the standards and benchmarks used to guide curriculum development. The revisions to the *Louisiana English Language Arts Content Standards* strengthen the content and add clarity to the document without affecting the integrity of the assessment instruments.

**Title 28  
EDUCATION**

**Part LXIII. English Language Arts Content Standards  
Chapter 1. Standard One**

**§101. General Provisions**

A. Standard One. Students read, comprehend, and respond to a range of materials, using a variety of strategies for different purposes.

B. Focus. As students move through the stages of reading development from emergent literacy to fluent, strategic reading, they learn to draw upon their prior experiences, their interactions with other readers and writers, their knowledge of word meaning and of other texts, their

word identification strategies, and their understanding of textual features (e.g., semantic, syntactic, graphophonic). Students need to learn how to vary their approaches according to the type of text (e.g., written, spoken, or visual, including formal, informal, literary, and practical), their purpose in reading, and their own knowledge and experiences. Therefore, students should read for a variety of purposes and within a variety of contexts in order to become proficient and knowledgeable readers. Discovering various purposes and exploring and studying different kinds of texts will enable students to become lifelong readers and productive members of society and the workplace.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:306 (March 2003).

**§103. Benchmarks K-4**

A. In Grades K-4, what students know and are able to do includes the following.

1. ELA-1-E1C Gaining meaning from print and building vocabulary using a full range of strategies (e.g., self-monitoring and correcting, searching, cross-checking), evidenced by reading behaviors while using phonemic awareness, phonics, sentence structure, meaning (1, 4)

2. ELA-1-E2C Using the conventions of print (e.g., left-to-right directionality, top-to-bottom, one-to-one matching, sentence framing) (1, 4)

3. ELA-1-E3C Adjusting speed of reading (e.g., appropriate pacing, intonation, expression) to suit the difficulty of materials and the purpose for reading (e.g., enjoying, learning, problem solving) (1, 4)

4. ELA-1-E4C Recognizing story elements (e.g., setting, plot, character, theme) and literary devices (e.g., simile, dialogue, personification) within a selection (1,4)

5. ELA-1-E5C Reading, comprehending, and responding to written, spoken, and visual texts in extended passages (e.g., range for fiction passages 450-1,000 words; range for nonfiction-450-850 words) (1, 3, 4)

6. ELA-1-E6C Interpreting (e.g., retelling, summarizing) texts to generate connections to real-life situations (1, 2, 4)

7. ELA-1-E7C Reading with fluency (natural sequencing of words) for various purposes (e.g., enjoying, learning, problem solving) (1, 2, 4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:306 (March 2003).

### §105. Benchmarks 5-8

A. As students in Grades 5-8 extend their knowledge, what they know and are able to do includes the following.

1. ELA-1-M1C Using knowledge of word meaning and developing basic and technical vocabulary using various strategies (e.g., context clues, idioms, affixes, etymology, multiple-meaning words) (1, 4)

2. ELA-1-M2C Interpreting story elements (e.g., mood, tone, style)\* and literary devices (e.g., flashback, metaphor, foreshadowing, symbolism)\* within a selection (1, 4)

3. ELA-1-M3C Reading, comprehending, and responding to written, spoken, and visual texts in extended passages (e.g., ranging from 500-1,000 words) (1, 3, 4)

4. ELA-1-M4C Interpreting (e.g., paraphrasing, comparing, contrasting) texts with supportive explanations to generate connections to real-life situations and other texts (e.g., business, technical, scientific) (1, 2, 4, 5)

5. ELA-1-M5C Adjusting reading rate according to texts and purposes for reading (e.g., problem solving, evaluating, researching)\* (1, 2, 4, 5)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:307 (March 2003).

### §107. Benchmarks 9-12

A. As students in Grades 9-12 extend and refine their knowledge, what they know and are able to do includes the following.

1. ELA-1-H1C Using knowledge of word meaning and extending basic and technical vocabulary, employing a variety of strategies (e.g., contexts, connotations and denotations, word derivations, relationships, inferences) (1, 4)

2. ELA-1-H2C Analyzing and evaluating the effects of complex elements and complex literary devices (e.g., irony, sarcasm, ambiguity)\*\* on the meaning and purpose of a selection (1, 2, 4)

3. ELA-1-H3C Reading, comprehending, and responding to extended, complex, written, spoken, and visual texts (e.g., ranging from 600-1,500 words) (1, 2, 3, 4)

4. ELA-1-H4C Analyzing and evaluating complex texts with supportive explanations to generate connections to real-life situations and other texts (e.g., consumer materials, public documents) (1, 2, 4, 5)

5. ELA-1-H5C Adjusting reading rate according to texts and purposes for reading (e.g., analyzing, synthesizing, evaluating)\*\* (1, 2, 4)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:307 (March 2003).

## Chapter 2. Standard Two

### §201. General Provisions

A. Standard Two. Students write competently for a variety of purposes and audiences.

B. Focus. Writing is a flexible, recursive process that requires an awareness of purpose and audience, an ability to draw on prior experience, and a knowledge of various approaches. To attain the necessary skills to create written text, students should engage in frequent, meaningful writing activities. As students use different strategies and modify their writing for various purposes and audiences, they become competent in communicating in real-life situations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:307 (March 2003).

### §203. Benchmarks K-4

A. In Grades K-4, what students know and are able to do includes the following.

1. ELA-2-E1C Drawing, dictating and writing compositions that clearly state or imply a central idea with supporting details in a logical, sequential order (beginning, middle, end) (1, 4)

2. ELA-2-E2C Focusing on language (vocabulary), concepts, and ideas that show an awareness of the intended audience and/or purpose (e.g., classroom, real-life, workplace) in developing compositions (1, 2, 4)

3. ELA-2-E3C Creating written texts using the writing process (1, 4)

4. ELA-2-E4C Using narration, description, exposition, and persuasion to develop compositions (e.g., stories, letters, poems, logs) (1, 4)

5. ELA-2-E5C Recognizing and applying literary devices (e.g., figurative language) (1, 4)

6. ELA-2-E6C Writing as a response to texts and life experiences (e.g., journals, letters, lists) (1, 2, 4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:307 (March 2003).

### §205. Benchmarks 5-8

A. As students in Grades 5-8 extend their knowledge, what they know and are able to do includes the following.

1. ELA-2-M1C Writing multiparagraph compositions (150-200 words) that clearly imply a central idea with supporting details in a logical, sequential order (1, 4)

2. ELA-2-M2C Using language, concepts, and ideas that show an awareness of intended audience and/or purpose (e.g., classroom, real-life, workplace) in developing complex compositions (1, 2, 4)

3. ELA-2-M3C Identifying and applying the steps of the writing process (1, 4)

4. ELA-2-M4 Using narration, description, exposition, and persuasion to develop various modes of writing (e.g., notes, essays)\* (1, 4)

5. ELA-2-M5C Identifying and applying literary devices (e.g., symbolism, dialogue)\* (1, 4)

6. ELA-2-M6C Writing as a response to texts and life experiences (e.g., personal and business letters)\* (1, 2, 4)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:307 (March 2003).

### **§207. Benchmarks 9-12**

A. As students in Grades 9-12 extend and refine their knowledge, what they know and are able to do includes the following.

1. ELA-2-H1C Writing compositions (250-300 words) that employ specific organizational elements (e.g., spatial order, order of importance, ascending/descending order, chronological order) and clearly imply a central idea with supporting details in a logical, sequential order (1, 4)

2. ELA-2-H2C Using language, concepts, and ideas that show an awareness of the intended audience and/or purpose (e.g., classroom, real-life, workplace) in developing complex compositions (1, 2, 4)

3. ELA-2-H3C Applying the steps of the writing process, emphasizing revising and editing in final drafts (1, 4)

4. ELA-2-H4C Using narration, description, exposition, and persuasion to develop various modes of writing (e.g., editorials, critical analyses)\*\* (1, 4)

5. ELA-2-H5C Applying literary devices And various stylistic elements (e.g., diction, sentence structure, voice, tone)\*\* (1, 4)

6. ELA-2-H6C Writing as a response to texts and life experiences (e.g., technical writing, resumes)\*\* (1, 2, 4, 5)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:308 (March 2003).

## **Chapter 3. Standard Three**

### **§301. General Provisions**

A. Standard Three. Students communicate using standard English grammar, usage, sentence structure, punctuation, capitalization, spelling, and handwriting.

B. Focus. Communication is dependent on the practical application of standard English to real-life situations. Students need to be able to apply the knowledge of the systems and structures of standard English in order to develop, discuss, and critique various texts. When students connect the study of grammar and language patterns to written, spoken, and visual compositions, they begin to incorporate these skills into their own working knowledge and ensure that the texts that they create are well received and understood.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:308 (March 2003).

### **§303. Benchmarks K-4**

A. In Grades K-4, what students know and are able to do includes the following.

1. ELA-3-E1C Writing legibly, allowing margins and correct spacing between letters in a word and words in a sentence (1, 4)

2. ELA-3-E2C Demonstrating use of punctuation (e.g., comma, apostrophe, period, question mark, exclamation mark), capitalization, and abbreviations in final drafts of writing assignments (1, 4)

3. ELA-3-E3C Demonstrating standard English structure and usage by writing clear, coherent sentences (1, 4)

4. ELA-3-E4C Using knowledge of the parts of speech to make choices for writing (1, 4)

5. ELA-3-E5C Spelling accurately using strategies (e.g., letter-sound correspondence, hearing and recording sounds in sequence, spelling patterns, pronunciation) and resources (e.g., glossary, dictionary) when necessary (1, 4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:308 (March 2003).

### **§305. Benchmarks 5-8**

A. As students in Grades 5-8 extend their knowledge, what they know and are able to do includes the following.

1. ELA-3-M1C Writing fluidly and legibly in cursive or printed form (1, 4)

2. ELA-3-M2C Demonstrating use of punctuation (e.g., colon, semicolon, quotation marks, dashes, parentheses), capitalization, and abbreviations (1, 4)

3. ELA-3-M3C Demonstrating standard English structure and usage by using correct and varied sentence types (e.g., compound and compound-complex) and effective personal styles (1, 4, 5)

4. ELA-3-M4C Demonstrating understanding of the parts of speech to make choices for writing (1, 4)

5. ELA-3-M5C Spelling accurately using strategies and resources (e.g., glossary, dictionary, thesaurus, spell check) when necessary (1, 3, 4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:308 (March 2003).

### **§307. Benchmarks 9-12**

A. As students in Grades 9-12 extend and refine their knowledge, what they know and are able to do includes the following.

1. ELA-3-H1C writing fluidly and legibly in cursive or printed form (1, 4)

2. ELA-3-H2C Using the grammatical and mechanical conventions of standard English (1, 4, 5)

3. ELA-3-H3C Spelling accurately using strategies and resources (e.g., technical glossary, specialized dictionary) when necessary (1, 3, 4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:308 (March 2003).

## **Chapter 4. Standard Four**

### **§401. General Provisions**

A. Standard Four. Students demonstrate competence in speaking and listening as tools for learning and communicating.

B. Focus. Communication is dependent on the interpersonal skills of speaking and listening and on the ability to work collaboratively with different people. Since information can be conveyed in various ways (e.g., between persons or groups, between persons and technological mechanisms, or between mechanisms), students need to understand the communication process: the concepts of

sender and receiver, the ability to track communication breakdowns, recognition of verbal and nonverbal cues, and the art of follow-through. Understanding the communication process and applying this understanding to different audiences, purposes, and contexts will enable students to achieve effective communication in real-life situations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:308 (March 2003).

#### **§403. Benchmarks K-4**

A. In Grades K-4, what students know and are able to do includes the following.

1. ELA-4-E1C Speaking intelligibly, using standard English pronunciation (1, 4)

2. ELA-4-E2C Giving and following directions/procedures (1, 4)

3. ELA-4-E3C Telling or retelling stories in sequence (1, 4)

4. ELA-4-E4C Giving rehearsed and unrehearsed presentations (1, 4)

5. ELA-4-E5C Speaking and listening for a variety of audiences (e.g., classroom, real-life, workplace) and purposes (e.g., awareness, concentration, enjoyment, information, problem solving) (1, 2, 4, 5)

6. ELA-4-E6C Listening and responding to a wide variety of media (e.g., music, TV, film, speech) (1, 3, 4, 5)

7. ELA-4-E7C Participating in a variety of roles in group discussions (e.g., active listener, contributor, discussion leader) (1, 4, 5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:309 (March 2003).

#### **§405. Benchmarks 5-8**

A. As students in Grades 5-8 extend their knowledge, what they know and are able to do includes the following.

1. ELA-4-M1C Speaking intelligibly, using standard English pronunciation and diction (1, 4)

2. ELA-4-M2C Giving and following directions/procedures (1, 4)

3. ELA-4-M3C Using the features of speaking (e.g., audience analysis, message construction, delivery, interpretation of feedback) when giving rehearsed and unrehearsed presentations (1, 2, 4)

4. ELA-5-M4C Speaking and listening for a variety of audiences (e.g., classroom, real-life, workplace) and purposes (e.g., awareness, concentration, enjoyment, information, problem solving) (1, 2, 4, 5)

5. ELA-4-M5C Listening and responding to a wide variety of media\* (1, 3, 4, 5)

6. ELA-4-M6C Participating in a variety of roles in group discussions (e.g., facilitator, recorder)\* (1, 4, 5)

\* Inclusive of K-4 examples

\*\* inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:309 (March 2003).

#### **§407. Benchmarks 9-12**

A. As students in Grades 9-12 extend and refine their knowledge, what they know and are able to do includes the following.

1. ELA-4-H1C Speaking intelligibly, using standard English pronunciation and diction (1, 4)

2. ELA-4-H2C Giving and following directions/procedures (1, 4)

3. ELA-4-H3C Using the features of speaking (e.g., audience analysis, message construction, delivery, interpretation of feedback) when giving prepared and impromptu presentations (1, 2, 4)

4. ELA-4-H4C Speaking and listening for a variety of audiences (e.g., classroom, real-life, workplace) and purposes (e.g., awareness, concentration, enjoyment, information, problem solving) (1, 2, 4, 5)

5. ELA-4-H5C Listening and responding to a wide variety of media (e.g., CD-ROM)\*\* (1, 3, 4)

6. ELA-4-H6C Participating in a variety of roles in group discussion (e.g., mediator)\*\* (1, 4, 5)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:309 (March 2003).

### **Chapter 5. Standard Five**

#### **§501. General Provisions**

A. Standard Five. Students locate, select, and synthesize information from a variety of texts, media, references, and technological sources to acquire and communicate knowledge.

B. Focus. The information and technology age demands multifaceted approaches to accessing facts, images, and text from an array of information sources (e.g., libraries, electronic data, audio and video materials). The vast amount of available sources includes the reading and retrieval of information through the use of technology. The ability to identify topics, to gather information, and to evaluate, assemble, and interpret findings from an assortment of sources is one of the most essential real-life skills that students need in order to acquire and communicate knowledge in a rapidly changing world.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:309 (March 2003).

#### **§503. Benchmarks K-4**

A. In Grades K-4, what students know and are able to do includes the following.

1. ELA-5-E1C Recognizing and using organizational features of printed text, other media, and electronic information (e.g., parts of a text, alphabetizing, captions, legends, pull-down menus, keyword searches, icons, passwords, entry menu features) (1, 3, 4)

2. ELA-5-E2C Locating and evaluating information sources (e.g., print materials, databases, CD-ROM references, Internet information, electronic reference works, community and government data, television and radio resources, audio and visual materials) (1, 3, 4, 5)

3. ELA-5-E3C Locating, gathering, and selecting information using graphic organizers, simple outlining, note taking, and summarizing to produce texts and graphics (1, 3, 4)

4. ELA-5-E4C Using available technology to produce, revise, and publish a variety of works (e.g., book reviews, summaries, short research reports) (1, 3, 4)

5. ELA-5-E5C Giving credit for borrowed information by telling or listing sources (1, 4)

6. ELA-5-E6C Recognizing and using graphic organizers (e.g., charts/graphs, tables/schedules, diagrams/maps) (1, 2, 3, 4, 5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:309 (March 2003).

#### §505. Benchmarks 5-8

A. As students in Grades 5-8 extend their knowledge, what they know and are able to do includes the following.

1. ELA-5-M1C Identifying and using organizational features of printed text, other media, and electronic information (e.g., microprint, CD-ROM, e-mail)\* (1, 3, 4)

2. ELA-5-M2C Integrating information sources\* (1, 3, 4, 5)

3. ELA-5-M3C Locating, gathering, and selecting information using formal outlining, paraphrasing, interviewing, and surveying to produce documented texts and graphics\* (1, 3, 4)

4. ELA-5-M4C Using available technology to produce, revise, and publish a variety of works (e.g., documented research reports, investigative reports, annotated bibliographies)\* (1, 3, 4)

5. ELA-5-M5C Citing references using various formats (e.g., endnotes, bibliography)\* (1, 4)

6. ELA-5-M6C Identifying and interpreting graphic organizers (e.g., flowcharts, timelines, tree diagrams)\* (1, 2, 3, 4, 5)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:310 (March 2003).

#### §507. Benchmarks 9-12

A. As students in Grades 9-12 extend and refine their knowledge, what they know and are able to do includes the following.

1. ELA-5-H1C Evaluating and using organizational features of printed text, other media, and electronic information (e.g., citations, endnotes, bibliographic references)\*\* (1, 3, 4)

2. ELA-5-H2C Synthesizing information sources\*\* (1, 3, 4, 5)

3. ELA-5-H3C Accessing information and conducting research using a variety of primary and secondary sources to produce formal papers\*\* (1, 2, 3, 4)

4. ELA-5-H4C Using available technology to produce, revise, and publish a variety of works (e.g., abstracts, analytical reports, summative research)\*\* (1, 3, 4)

5. ELA-5-H5C Citing references using various formats (e.g., parenthetical citations, annotated bibliographies)\*\* (1, 4)

6. ELA-5-H6C Analyzing and synthesizing graphic organizers (e.g., organizational charts, concept maps, comparative tables)\*\* (1, 2, 3, 4, 5)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:310 (March 2003).

## Chapter 6. Chapter Six

### §601. General Provisions

A. Standard Six. Students read, analyze, and respond to literature as a record of life experiences.

B. Focus. Literature is a record of life experiences as set forth in various writings (e.g., history, novels, poetry, science fiction, essays, news articles, logs). The study of literary texts recognizes characteristics of enduring literature, discovers and reviews the elements of various genres, identifies diverse perspectives, and distinguishes cultural traditions. The study of literature and writers of the United States and throughout the world gives students an appreciation of other cultures in a global society. Through a comprehensive literature program, students learn to make connections between literary texts and their own lives, to develop their own perspectives, and to analyze different viewpoints toward events, circumstances, and issues in our complex society.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:310 (March 2003).

### §603. Benchmarks K-4

A. In Grades K-4, what students know and are able to do includes the following.

1. ELA-6-E1C Recognizing and responding to United States and world literature that represents the experiences and traditions of diverse ethnic groups (1, 4, 5)

2. ELA-6-E2C Recognizing and responding to a variety of classic and contemporary fiction and non-fiction literature from many genres (e.g., folktales, legends, myths, biography, autobiography, poetry, short stories) (1, 4)

3. ELA-6-E3C Identifying and distinguishing key differences of various genres (1, 2, 4, 5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:310 (March 2003).

### §605. Benchmarks 5-8

A. As students in Grades 5-8 extend their knowledge, what they know and are able to do includes the following.

1. ELA-6-M1C Comparing/contrasting and responding to United States and world literature that represents the experiences and traditions of diverse ethnic groups (1, 4, 5)

2. ELA-6-M2C Identifying, comparing, and responding to a variety of classic and contemporary fiction and non-fiction literature from many genres (e.g., novels, drama)\* (1, 2, 4, 5)

3. ELA-6-M3C Classifying and interpreting various genres according to their unique characteristics (1, 2, 4, 5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:310 (March 2003).

### §607. Benchmarks 9-12

A. As students in grades 9-12 extend and refine their knowledge, what they know and are able to do includes the following.

1. ELA-6-H1C Analyzing, evaluating, and responding to United States and world literature that represents the experiences and traditions of diverse ethnic groups (1, 2, 4, 5)

2. ELA-6-H2C Analyzing and evaluating distinctive elements (e.g., recurrent themes, historical significance, literary techniques) of ancient, American, British, and world literature (1, 2, 4, 5)

3. ELA-6-H3C Analyzing, and synthesizing a variety of classic and contemporary fiction and non-fiction literature from many genres (e.g., epics)\*\* (1, 2, 4, 5)

4. ELA-6-H4C Analyzing and responding to various genres as records of life experiences (1, 2, 4, 5)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:310 (March 2003).

## Chapter 7. Standard Seven

### §701. General Provisions

A. Standard Seven. Students apply reasoning and problem solving skills to their reading, writing, speaking, listening, viewing, and visually representing.

B. Focus. Students use language daily to solve problems and deal with issues surrounding them. In order to respond effectively to these situations, students need to use the English Language Arts clearly, fluently, strategically, critically, technologically, and creatively. Students should use reasoning skills as they pose questions, plan, predict, investigate, hypothesize, speculate, and communicate about issues they encounter in academic subjects as well as in everyday life.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:311 (March 2003).

### §703. Benchmarks K-4

A. In Grades K-4, what students know and are able to do includes the following.

1. ELA-7-E1C Using comprehension strategies (e.g., sequencing, predicting, drawing conclusions, comparing and contrasting, making inferences, determining main ideas) to interpret oral, written, and visual texts (1, 2, 4)

2. ELA-7-E2C Using basic reasoning skills, life experiences, and available information to solve problems in oral, written, and visual texts (1, 2, 4)

3. ELA-7-E3C Recognizing an author's purpose (reason for writing), and viewpoint (perspective) (1, 2, 4)

4. ELA-7-E4C Using basic reasoning skills to distinguish fact from opinion, skim and scan for facts, determine cause and effect, generate inquiry, and make connections with real-life situations (1, 2, 4, 5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:311 (March 2003).

### §705. Benchmarks 5-8

A. As students in Grades 5-8 extend their knowledge, what students know and are able to do includes the following.

1. ELA-7-M1C Using comprehension strategies (e.g., summarizing, recognizing literary devices, paraphrasing)\* to analyze oral, written, and visual texts (1, 2, 4)

2. ELA-7-M2C Using reasoning skills (e.g., categorizing, prioritizing),\* life experiences, accumulated

knowledge, and relevant available information resources to solve problems in oral, written, and visual texts (1, 2, 4)

3. ELA-7-M3C Interpreting the effects of an author's purpose (reason for writing) and viewpoint (perspective) (1, 2, 4)

4. ELA-7-M4C Using inductive and deductive reasoning skills across oral, written, and visual texts\* (1, 2, 4, 5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:311 (March 2003).

### §707. Benchmarks 9-12

A. As students in Grades 9-12 extend and refine their knowledge, what they know and are able to do includes the following.

1. ELA-7-H1C Using comprehension strategies (e.g., synthesizing, critiquing)\*\* to evaluate oral, written, and visual texts (1, 2, 4)

2. ELA-7-H2C Using reasoning skills (e.g., analyzing evaluating),\*\* incorporating life experiences, and using available information resources to solve problems in complex oral, written, and visual texts (1, 2, 4, 5)

3. ELA-7-H3C Analyzing and evaluating the effects of an author's life, culture, and philosophical assumptions as reflected in the author's viewpoint (perspective) (1, 2, 4, 5)

4. ELA-7-H4C Using analytical reasoning skills in a variety of complex oral, written, and visual texts\*\* (1, 2, 4, 5)

\* Inclusive of K-4 examples

\*\* Inclusive of K-8 examples

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:311 (March 2003).

Weegie Peabody  
Executive Director

0303#014

## RULE

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

Commercial Laboratories Pending Accreditation  
(LAC 33:I.4501 and 4719)(OS039)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary amends the Office of the Secretary regulations, LAC 33:I.4501 and 4719 (Log #OS039).

As a result of deadlines established in current Louisiana regulations, the department was prohibited from accepting data from commercial laboratories that have not received departmental accreditation. This Rule will allow the department to accept data from laboratories that have submitted complete applications and supporting documents, have submitted documentation verifying certification/accreditation by a department-approved accreditation program or supporting documentation showing

the quality assurance and quality control program used to generate analytical data by the laboratory, and have paid all appropriate fees. The department is adding an exemption for personnel monitoring services and those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 Code of Federal Regulations, due to the fact that they are licensed under other department regulations and to prevent an additional economic burden and duplication of effort by the department. The department relies on the analytical data to determine permit compliance, enforcement issues, and effectiveness of remediation of soils and groundwater. Permit issuance and compliance are effective means of determining the impact on human health and the environment. The basis and rationale for this Rule are to establish regulations to allow the department to have access to accurate, reliable, precise analytical data in order to meet its mandate to protect human health and the environment. This Rule will promulgate the regulation changes in Emergency Rule OS039E4, which was effective on March 11, 2003.

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**

## **ENVIRONMENTAL QUALITY**

### **Part I. Office of the Secretary**

#### **Subpart 3. Laboratory Accreditation**

#### **Chapter 45. Policy and Intent**

##### **§4501. Description and Intent of Program**

A. - D. ...

E. This Subpart shall not apply to the following:

1. laboratory analyses programs accredited under the regulatory and statutory authority of the Louisiana Department of Health and Hospitals; and

2. personnel monitoring services in accordance with LAC 33:XV.430.C and to those activities specifically licensed in accordance with LAC 33:XV.Chapter 3.Subchapter B, equivalent agreement state regulations, and the Nuclear Regulatory Commission regulations, Title 10 *Code of Federal Regulations*.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:917 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1434 (July 2000), LR 29:312 (March 2003).

#### **Chapter 47. Program Requirements**

##### **§4719. Implementation**

A. - B. ...

C. The department will accept analytical data generated by laboratories that do not comply with the deadlines established in Subsection B of this Section for accreditation if such laboratories:

1. have submitted a complete application form and supporting documents;

2. have submitted documentation verifying certification/accreditation by a department-approved

accreditation program or supporting documentation showing the quality assurance and quality control program used to generate analytical data by the laboratory; and

3. have paid appropriate fees.

D. These regulations shall not apply to field tests as defined in LAC 33:I.4503.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:922 (May 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1436 (July 2000), LR 29:312 (March 2003).

James H. Brent, Ph.D.  
Assistant Secretary

0303#072

### **RULE**

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

#### **Reorganization of Solid Waste Regulations (LAC 33:VII.Chapters 151-169)(SW031)**

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 repealed LAC 33:VII.Subpart 3 of the solid waste regulations (Log #SW031).

This Rule repealed and replaced in its entirety all previously promulgated Solid Waste regulations cited as LAC 33:VII.Subpart 1 and repealed in its entirety LAC 33:VII.Subpart 3, Louisiana Resource Recovery and Development Authority. This action was being taken to: 1) reorganize the regulations in a more user-friendly manner; 2) correct errors in text; 3) eliminate the Louisiana Resource Recovery and Development Authority (LRRDA) in accordance with Act 524 of the 2001 Louisiana Legislative Session; 4) clarify technical requirements for all solid waste facilities; 5) incorporate into regulations geology and groundwater standards currently required by the department; 6) allow the department to establish the numbers and levels of certified operators at a facility; 7) provide more flexibility regarding characterization of subsurface geology; 8) remove language allowing operations at a proposed facility with a temporary permit; and 9) establish a basis for the phrase "environmentally sound manner." Upon further evaluation of the solid waste regulations and after review and consideration of comments received, the department has chosen to sever Subpart 1 from the proposed Rule and not promulgate it at this time. The repeal of Subpart 3, Louisiana Resource Recovery and Development Authority, is the only portion of the Rule that is being promulgated.

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**  
**ENVIRONMENTAL QUALITY**

**Part VII. Solid Waste**

**Subpart 3. Louisiana Resource Recovery and  
Development Authority**

**Chapter 151. General Provisions**

**§15101. Name**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:501 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15103. Legislative Authority and Governance**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:654 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15105. Purposes of the Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:654 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15107. Object of these Rules**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15109. Definition**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:654 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15111. Filings with the Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:654 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15113. Parliamentary Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15115. Effective Date and Duration**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:654 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15117. Public Participation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:654 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**Chapter 153. Membership and Organization**

**§15301. Authority Membership**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15303. Term of Office**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15305. Representatives or Designees**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:502 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15307. Compensation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

**§15309. Resignation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:313 (March 2003).

### **§15311. Vacancies**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15313. Officers**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15315. Committees**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

## **Chapter 155. Meetings and Hearings**

### **§15501. Quorum**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15503. Public Meetings**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15505. Executive Session**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15507. Regular Meetings**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15509. Bi-Annual Meeting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15511. Special Meetings; Fact-Finding Hearings; Other Hearings**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:503 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15513. Notice**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15515. Request for Authority Action**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15517. Petitions for Hearings, Special Meetings or Action**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15519. Action on Petition**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15521. Continuances**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

### **§15523. Presiding Officer**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:314 (March 2003).

**§15525. Conduct**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§15527. Authority Minutes and Records**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**Chapter 157. Promulgation and Amendment of Rules**

**§15701. Promulgation of Rules**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§15703. Review and Amendment of Rules**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**Chapter 159. Staff Functions**

**§15901. Purpose of Definition**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§15903. Functions Retained by the Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§15905. Functions Assigned to the Staff**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:504 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**Chapter 161. Operating Policies**

**§16101. Policy for Establishing Waste Regions and Setting Boundaries**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:505 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§16103. Policy Governing Facility Development and Setting of Priorities for Financing**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:505 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§16105. Policy Governing the Setting of Fees, Charges, and Prices for the Use of Authority Facilities and for Products and By-Products of Such Facilities**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:505 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§16107. Policy Governing Planning, Design, Construction, and Operation of Authority Facilities**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:505 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**Chapter 163. Competitive Negotiations; Procurement of Goods and Services**

**§16301. Competitive Negotiations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), amended LR 8:520 (October 1982), amended by the Department of Environmental Quality, Office of Solid and Hazardous Waste, LR 20:655 (June 1994), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§16303. Procurement of Goods and Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§16305. Procurements of Personal, Professional and Consulting Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

**§16307. Procurements Related to Construction of Public Works**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:315 (March 2003).

#### **§16309. Confidentiality of Data**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:316 (March 2003).

#### **Chapter 165. Sales of Authority Products or Property (Excluding Bonds and Notes)**

##### **§16501. Sales of Steam from Authority Facilities**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:316 (March 2003).

##### **§16503. Sales of Electricity from Authority**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:316 (March 2003).

##### **§16505. Sale of Methane, Paper, Glass, Metals, Ash, or Other Products of Authority Facilities**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:316 (March 2003).

##### **§16507. Sale or Lease of Authority Property**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:316 (March 2003).

#### **Chapter 167. Financing**

##### **§16701. Financing**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506 (October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:316 (March 2003).

#### **Chapter 169. Construction and Effect**

##### **§16901. Construction and Effect**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2301 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Environmental Affairs, LR 7:506

(October 1981), repealed by Office of Environmental Assessment, Environmental Planning Division, LR 29:316 (March 2003).

James H. Brent, Ph.D.

Assistant Secretary

0303#073

### **RULE**

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

Incorporation by Reference (IBR) of 40 CFR 60  
(LAC 33:III.3003)(AQ230\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.3003 (Log #AQ230\*).

This Rule is identical to federal regulations found in 40 CFR 60.2575-60.2875, (July 1, 2001), 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).

It has been brought to the department's attention, by EPA Region VI, that the contents of the department's emission guidelines for commercial and industrial solid waste incineration units do not match the contents of LAC 33:III.3003.B.6. This Rule change corrects this inadvertent error. The draft emission guidelines plan actually includes 40 CFR 60.2575 through 2875. The basis and rationale for this Rule are to amend the regulations to correctly identify the contents of the department's emission guidelines for commercial and industrial solid waste incineration units.

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**

### **ENVIRONMENTAL QUALITY**

#### **Part III. Air**

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

##### **Subchapter A. Incorporation by Reference (IBR)**

##### **§3003. IBR 40 Code of Federal Regulations (CFR) Part 60**

A. - B.5. ...

6. The department's emission guideline plan, required by the CAA, Section 111(d), for Commercial and Industrial Solid Waste Incineration (CISWI) Units includes 40 CFR 60.2575-60.2875 and Tables 1-5. Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.2635, the department shall accept accreditation approved by other states complying with 40 CFR 60.2635.

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2181 (October 2002), LR 29:316 (March 2003).

James H. Brent, Ph.D.  
Assistant Secretary

0303#011

## RULE

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

#### RCRA XII Package

(LAC 33:V.105, 109, 321, 529, 535, 537, 2001, 2219, 2603, 3001, 3105, 3115, 4513, 4901, and 4903)(HW083\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste regulations, LAC 33:V.Chapters 1, 3, 5, 20, 22, 26, 30, 31, 43, and 49 (Log #HW083\*).

This Rule is identical to federal regulations found in 66 FR 50332-50334, 10/3/01; 66 FR 58258-58300, 11/20/01, amended 67 FR 17119-17120, 4/9/02; 67 FR 2962-3029, 1/22/02; 67 FR 6792-6818, 2/13/02; 67 FR 6968-6996, 2/14/02; 67 FR 11251-11254, 3/13/02, 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 Rule includes changes to the Hazardous Waste regulations on the following topics that are required by the Environmental Protection Agency for continued authorization of the RCRA program in the state of Louisiana: Mixture and Derived-From Revision II; Inorganic Chemical Manufacturing Wastes Identification and Listing; CAMU Amendments; Hazardous Air Pollutant Standards for Combustors: Interim Standards; Hazardous Air Pollutant Standards for Combustors: Corrections; Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste. The hazardous waste regulations for the state must be equivalent to those of the federal in order for the state to be authorized for the new portions of the RCRA program. The basis and rationale for this Rule are to mirror the federal regulations.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family

formation, stability, and autonomy as described in R.S. 49:972.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials

##### Subpart 1. Department of Environmental Quality—Hazardous Waste

#### Chapter 1. General Provisions and Definitions

##### §105. Program Scope

These Rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these Rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

A. - D.I.o. ...

p. spent materials (as defined in LAC 33:V.109) (other than hazardous wastes listed in LAC 33:V.Chapter 49) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

i. the spent material is legitimately recycled to recover minerals, acids, cyanide, water, or other values;

ii. the spent material is not accumulated speculatively;

iii. except as provided in Clause D.1.p.iv of this Section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of nonearthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the nonearthen portion) and have a roof suitable for diverting rainwater away from the foundation; a tank must be freestanding, not be a surface impoundment (as defined in LAC 33:V.109), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate that may be subject to wind dispersal, the owner/operator must operate these units in a manner that controls fugitive dust. Tanks, containers, and buildings must be designed, constructed, and operated to prevent significant releases to the environment of these materials;

iv. the administrative authority may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed, and operated to prevent significant releases of the spent material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers, and buildings eligible for exclusion;

(a). the decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway; and the possibility and extent of harm to human and environmental receptors via each exposure pathway;

(b). pads must meet the following minimum standards: be designed of nonearthen material that is compatible with the chemical nature of the mineral processing spent material; be capable of withstanding physical stresses associated with placement and removal; have run-on/runoff controls; be operated in a manner which controls fugitive dust; and have integrity assurance through inspections and maintenance programs;

(c). ...

v. the owner or operator provides notice to the Office of Environmental Services, Permits Division providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process; and

vi. for purposes of Subparagraph D.2.h of this Section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste;

D.1.q. - 2.p. ...

i. the solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing;

ii. - iv. ...

v. as of February 13, 2001, the leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this Clause after the emergency ends.

D.3. - O.2.c.vi. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319

(May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid And Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687 (September 1998), LR 24:1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003).

### §109. Definitions

For all purposes of these Rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

\*\*\*

*Hazardous Waste* Ca solid waste, as defined in this Section, is a hazardous waste if:

1. - 4.a. ...

b.i. Except as otherwise provided in Clause 4.b.ii, Subparagraph 4.f, or Paragraph 6 of this definition, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation runoff) is a hazardous waste. (However, materials that are reclaimed from solid waste and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

4.b.ii. - e. ...

f. A hazardous waste that is listed in LAC 33:V.4901 solely because it exhibits one or more characteristics of ignitability as defined under LAC 33:V.4903.B, corrosivity as defined under LAC 33:V.4903.C, or reactivity as defined under LAC 33:V.4903.D is not a hazardous waste if the waste no longer exhibits any characteristic of hazardous waste identified in LAC 33:V.4903. The exclusion also pertains to any mixture of a solid waste and a hazardous waste listed in LAC 33:V.4901 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity, as regulated under Subparagraph 2.c of this definition, and any solid waste generated from treating, storing, or disposing of a hazardous waste listed in LAC 33:V.4901 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity, as regulated under Clause 4.b.i of this definition. Wastes excluded under this Subparagraph are subject to LAC 33:V.Chapter 22 (as applicable), even if they no longer exhibit a characteristic at the point of land disposal. Any mixture of a solid waste excluded from regulation under LAC 33:V.105.D.2.h and a hazardous waste listed in LAC

33:V.Chapter 49 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity, as regulated under Subparagraph 2.d of this definition, is not a hazardous waste if the mixture no longer exhibits any characteristic of hazardous waste identified in LAC 33:V.Chapter 49 for which such hazardous waste was listed.

4.g. - 6.b. ...

\*\*\*

#### **Solid Waste**

1.a. - 3.b.ii. ...

c. *reclaimed* materials noted with an "\*" in column 3 of Table 1 in this Chapter are solid wastes when reclaimed (except as provided under LAC 33:V.105.D.1.p). Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed;

3.d. - Table 1. ...

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003).

### **Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits**

#### **§321. Modification of Permits**

A. - C.10. ...

a. Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000 (see 40 CFR 63, revised as of July 1, 2000) in order to request a permit modification under this Section.

C.10.b. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 15:378 (May 1989), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1691 (September 1998), LR 25:435 (March 1999), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:2466 (November 2000), LR 28:1000 (May 2002), LR 29:319 (March 2003).

### **Chapter 5. Permit Application Contents**

#### **Subchapter E. Specific Information Requirements**

##### **§529. Specific Part II Information Requirements for Incinerators**

Except as LAC 33:V.Chapter 31 and Subsection F of this Section provides otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of Subsection A, B, or C of this Section.

A. - E.3. ...

F. When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3117.A and C if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2011.D.24(a) and 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 22:817 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:2199 (November 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:319 (March 2003).

##### **§535. Specific Part II Information Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste for Energy or Material Recovery and not for Destruction**

A. - F. ...

G. When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3005.E.1 and 2.c if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:817 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:319 (March 2003).

## Subchapter F. Special Forms of Permits

### §537. Permits for Boiler and Industrial Furnaces Burning Hazardous Waste for Recycling Purposes Only (boilers and industrial furnaces burning hazardous waste for destruction are subject to permit requirements for incinerators)

A. - C.2. ...

D. When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3005.E.1 and 2.c if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:818 (September 1996), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2468 (November 2000), LR 27:292 (March 2001), LR 29:320 (March 2003).

## Chapter 20. Integration with Maximum Achievable Control Technology (MACT) Standards

### §2001. Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions from Startup, Shutdown, and Malfunction Events

NOTE: This Chapter is written in a special format to make it easier to understand the regulatory requirements. Like other department regulations, this establishes enforceable legal requirements. For this Chapter, I and you refer to the owner/operator.

#### A. Facilities with Existing Permits

1. Revisions to Permit Conditions after Documenting Compliance with MACT. The owner or operator of a RCRA -permitted incinerator, cement kiln, or lightweight aggregate kiln may request that the administrative authority address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to LA C 33:V.3105.B and LAC 33:V.3001.B.

a. Retain Relevant Permit Conditions. Under this option, the administrative authority will:

i. retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2); and

ii. specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

b. Revise Relevant Permit Requirements

i. Under this option, the administrative authority will:

(a). identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(b). retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

ii. Changes That May Significantly Increase Emissions

(a). You must notify the administrative authority in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the administrative authority of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(b). The administrative authority may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either upon permit renewal or, if warranted, by modifying the permit under LAC 33:V.323.B.2.c or LAC 33:V.321.C.

c. Remove Permit Conditions. Under this option:

i. you must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the administrator under 40 CFR 63.1206(c)(2)(ii)(B); and

ii. the administrative authority will remove permit conditions that are no longer applicable according to LAC 33:V.3105.B and LAC 33:V.3001.B.

2. Addressing Permit Conditions upon Permit Reissuance. The owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that has conducted a comprehensive performance test and submitted to the administrator a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, Subpart EEE may request in the application to reissue the permit for the combustion unit that the administrative authority control emissions from startup, shutdown, and malfunction events under any of the following options.

a. RCRA Option A. Under this option, the administrative authority will:

i. include, in the permit, requirements that ensure compliance with LAC 33:V.3117.B and C or LAC 33:V.3005.E.1 and 2.c to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and



ii. specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

b. RCRA Option B

i. Under this option, the administrative authority will:

(a). include, in the permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(b). specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

ii. Changes That May Significantly Increase Emissions

(a). You must notify the administrative authority in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the administrative authority of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(b). The administrative authority may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either upon permit renewal or, if warranted, by modifying the permit under LAC 33:V.323.B.2.c or LAC 33:V.321.C.

c. CAA Option. Under this option:

i. you must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the administrator under 40 CFR 63.1206(c)(2)(ii)(B); and

ii. the administrative authority will remove permit conditions that are no longer applicable under LAC 33:V.3105.B and LAC 33:V.3001.B.

B. Interim Status Facilities

1. Interim Status Operations. In compliance with LAC 33:V.4513 and LAC 33:V.3001.B, the owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of LAC 33:V.Chapters 30 and 43 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the administrator a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, Subpart EEE.

a. RCRA Option. Under this option, you must continue to comply with the interim status emission standards and operating requirements of LAC 33:V.Chapters 30 and 43 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events.

b. CAA Option. Under this option, you are exempt from the interim status standards of LAC 33:V.Chapters 30 and 43 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the administrative authority that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the administrator under 40 CFR 63.1206(c)(2)(ii)(B).

2. Operations under a Subsequent RCRA Permit. When an owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of LAC 33:V.Chapters 30 and 43 submits a RCRA permit application, the owner or operator may request that the administrative authority control emissions from startup, shutdown, and malfunction events under any of the options provided by Subparagraph A.2.a, b, or c of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:320 (March 2003).

**Chapter 22. Prohibitions on Land Disposal**

**Subchapter A. Land Disposal Restrictions**

**§2219. Waste Specific Prohibitions C Inorganic**

**Chemical Wastes**

A. Effective May 20, 2002, the wastes specified in 40 CFR Part 261 as EPA Hazardous Waste Numbers K176, K177, and K178, soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

B. The requirements of Subsection A of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223 and Table 2 of this Chapter;

2. persons have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241, with respect to those wastes and units covered by the petition;

3. the wastes meet the applicable treatment standards established in accordance with a petition granted under LAC 33:V.2231;

4. hazardous debris has met the treatment standards in LAC 33:V.2223 or the alternative treatment standards in LAC 33:V.2230; or

5. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239, with respect to those wastes covered by the extension.

C. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable levels in LAC 33:V.2223 and Table 2 of this Chapter, the waste is prohibited from land disposal, and all requirements of this Chapter are applicable, except as otherwise specified.

**Appendix**

**Table 2. Treatment Standards for Hazardous Wastes**

Waste Code	Waste Description and Treatment/Regulatory Subcategory 1	Regulated Hazardous Constituent		Wastewaters	Non-wastewaters
		Common Name * * *	CAS2 Number	Concentration in mg/l3; or Technology Code4	Concentration in mg/kg5 unless noted as "mg/l TCLP" or Technology Code4
[See Prior Text in D001 – K175]					
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440-36-0	1.9	1.15 mg/l T CLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-39-4	0.00035 or CMBST11	0.0025 or CMBST11
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.00035 or CMBST11	0.0025 or CMBST11
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.00035 or CMBST11	0.0025 or CMBST11
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	34465-46-8	0.00063 or CMBST11	0.001 or CMBST11
		HxCDFs (All Hexachlorodibenzofurans)	55684-94-1	0.00063 or CMBST11	0.001 or CMBST11
		1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.00063 or CMBST11	0.005 or CMBST11
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.00063 or CMBST11	0.005 or CMBST11
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088-22-9	0.00063 or CMBST11	0.001 or CMBST11
		PeCDFs (All Pentachlorodibenzofurans)	30402-15-4	0.00035 or CMBST11	0.001 or CMBST11
		TCDDs (All tetrachlorodibenzo-p-dioxins)	41903-57-5	0.00063 or CMBST11	0.001 or CMBST11
		TCDFs (All tetrachlorodibenzofurans)	55722-27-5	0.00063 or CMBST11	0.001 or CMBST11
	Thallium	7440-28-0	1.4	0.20 mg/l TCLP	
* * *					
[See Prior Text in P001 – U411]					

Notes 1 - 12 ...  
NOTE: NA means not applicable.

## **Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup**

### **§2603. Corrective Action Management Units (CAMUs)**

A. - E.4.a.ii. ...

iii. The administrative authority may also designate other constituents as principal hazardous constituents that the administrative authority determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

E.4.b. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1192 (June 2002), LR 29:323 (March 2003).

## **Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces**

### **§3001. Applicability**

A. The regulations of this Chapter apply to hazardous waste burned for energy or material recovery in a boiler or industrial furnace (as defined in LAC 33:V.109) irrespective of the purpose of burning or processing, except as provided by Subsections B-D, G, and H of this Section. In this Chapter, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of LAC 33:V.3009-3015 apply to facilities operating under interim status or under a hazardous waste permit as specified in LAC 33:V.3005 and 3007.

B. Integration of the MACT Standards

1. Except as provided by Paragraph B.2 of this Section, the standards of this Chapter no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting to the administrative authority a notification of compliance under 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, Subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this Chapter will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

2. The following standards continue to apply:

a. if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, LAC 33:V.3005.E.1, requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and LAC 33:V.3005.E.2.c, requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;

b. the closure requirements of LAC 33:V.3005.I and 3007.L;

c. the standards for direct transfer of LAC 33:V.3023;

d. the standards for regulation of residues of LAC 33:V.3025; and

e. the applicable requirements of LAC 33:V.901, 905, 907, 909, Chapters 15, 17 (Subchapters B and C), 33, 35, 37, and 43 (Subchapters A-G, R, and V), 4301.A-C, G, and I, and 4306.

C. - D.2.b. ...

3. To be exempt from LAC 33:V.3005-3023, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing must provide a one-time written notice to the administrative authority identifying each hazardous waste burned, specifying whether the owner or operator claims an exemption for each waste under Paragraph D.1 or 3 of this Section. The owner or operator must comply with the requirements of Paragraph D.1 of this Section for those wastes claimed to be exempt under that Section and must comply with the requirements below for those wastes claimed to be exempt under this Section.

D.3.a. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:821 (September 1996), LR 22:835 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 27:297 (March 2001), LR 27:712 (May 2001), LR 29:323 (March 2003).

## **Chapter 31. Incinerators**

### **§3105. Applicability**

A. - B. ...

1. Except as provided by Paragraphs B.2, 3, and 4 of this Section, the standards of this Subsection no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting to the administrative authority a notification of compliance under 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, Subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of LAC 33:V.901, 905, 907, and Chapters 15-21, 23-29, and 31-37 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

2. ...

3. The particulate matter standard of LAC 33:V.3111.A.4 remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 40 CFR 63.1206(b)(14).

4. The following requirements remain in effect for startup, shutdown, and malfunction events if the owner or

operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from these events:

a. LAC 33:V.3117.A, requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

b. LAC 33:V.3117.C, requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

C. - Table 1.Footnote 1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:1139 (December 1985), LR 13:433 (August 1987), LR 14:424 (July 1988), LR 15:737 (September 1989), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:318 (February 1998), LR 24:681 (April 1998), LR 24:1741 (September 1998), LR 25:479 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:301 (March 2001), LR 28:1004 (May 2002), LR 29:323 (March 2003).

**§3115. Incinerator Permits for New or Modified Facilities**

A. - D. ...

E. When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3117.A and C if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

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

Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 22:828 (September 1996), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:683 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2484 (November 2000), LR 27:302 (March 2001), LR 29:324 (March 2003).

**Chapter 43. Interim Status**

**Subchapter N. Incinerators**

**§4513. Applicability**

A. - B. ...

1. Except as provided by Paragraphs B.2 and 3 of this Section, the standards of this Chapter no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting to the administrative authority a notification of compliance under 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, Subpart EEE.

2. The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of 40 CFR Part 63, Subpart EEE, LAC 33:V.4521 (closure), and the applicable requirements of LAC 33:V.4301.A-C, G, and I, 4306, and Chapter 43 (Subchapters A-G, R, and V).

3. LAC 33:V.4517.A, generally prohibiting burning of hazardous waste during startup and shutdown, remains in effect if the owner or operator elects to comply with LAC 33:V.2001.B.1.a to minimize emissions of toxic compounds from startup and shutdown.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:737 (September 1989), amended LR 16:220 (March 1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:303 (March 2001), LR 29:324 (March 2003).

**Chapter 49. Lists of Hazardous Wastes**

**§4901. Category I Hazardous Wastes**

A. - C. ...

**Table 2. Hazardous Wastes from Specific Sources**

Industry and EPA Hazardous Waste Number	Hazard Code	Hazardous Waste
***		
[See Prior Text in Wood Preservation, K001 – Inorganic Chemicals, K106]		
K176	(E)	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).
K177	(T)	Slag from the production of antimony accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).
K178	(T)	Residues from manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.
***		
[See Prior Text in Pesticides, K031 – Coking, K148]		

D. - G. ...

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste
***
[See Prior Text in F001 – K175, Mercury]
<b>EPA Hazardous Waste Number K176</b>
Arsenic
Lead
<b>EPA Hazardous Waste Number K177</b>
Antimony
<b>EPA Hazardous Waste Number K178</b>
Thallium

**RULE**

**Office of the Governor  
Division of Administration  
Board of Cosmetology**

CosmetologyCComplete Revision  
(LAC 46:XXXI.Chapters 1-17)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003).

**§4903. Category II Hazardous Wastes**

A. - E. ...

1. A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, Method 1311 described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110, the extract from a representative sample of the waste contains any of the contaminants listed in Paragraph E.2. Table 5 of this Section at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this Section.

E.2. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 22:829 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:325 (March 2003).

James H. Brent, Ph.D.  
Assistant Secretary

0303#012

The State Board of Cosmetology, under authority of R.S. 37:561-607, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has adopted certain Rules with regard to licensing of cosmetologists.

The revision is necessitated by Act 907 of 2001 which revised the Louisiana Cosmetology Act.

There should be no adverse fiscal impact on the state as a result of this Rule inasmuch as the Louisiana State Board of Cosmetology operates solely on self-generated funds. Further, the Rules have no known impact on family formation, stability or autonomy as described in R.S. 49:972.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXI. Cosmetologists**

**Chapter 1. General Provisions**

**§101. Definitions**

A. As used in this Part, the following words shall have the meaning herein ascribed to each, unless the context clearly indicates otherwise.

*Alternative Hair*Cany hair which is not a person's own hair including synthetic hair, wiggery, braids, postich or any applied hair.

*Alternative Hair Design*Cthe practice of styling hair by twisting, wrapping weaving, extending, locking or braiding the hair by either the use of hands or mechanical devices or appliances. The practice of alternative hair design shall include the application of antiseptics, powders, oils, clays, lotions or tonics to the alternative hair but shall not include the application of dyes, reactive chemicals or other preparations to alter the structure or style of the natural hair.

*Client*Ca person who receives a cosmetology, esthetics or manicuring service.

*Dermis*Cunderlying or inner layer of the skin; the layer below the epidermis; the corium or true skin, including papillary layer, capillaries, tactile corpuscles, melanin (pigment), subcutaneous tissue, adipose or subcutis, arteries and lymphatics.

*Disposable*Can item which cannot be sanitized. All disposable items shall be discarded after a single use. The following items shall be considered disposable: facial tissues, sponges, cloths, extraction tissue, lancets, gloves, wax strips and sticks, tissues, cotton pads and emery boards.

*Epidermis*Cthe outermost layer of the skin; the outer epithelial portion of the skin including stratum corneous, stratum lucidum, stratum granulosum, stratum spinosum (prickle cell layer), stratum mucosum, and stratum germinativum.

*Exfoliate or Exfoliation*Cthe process of sloughing off, removing or peeling dead skin cells of the epidermis using chemicals or devices.

*Natural Hair*—Any hair which is a person's own which has grown on the person's body and has not been separated from the person's body.

*Sanitize or Sanitization*—The process of using heat, steam or chemicals to destroy microbial life, including highly resistant bacterial endospores. Sanitization shall be performed using EPA registered hospital grade disinfectant or a sterilization device which uses heat or steam in accordance with the manufacturer's instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Louisiana State Board of Cosmetology, LR 29:325(March 2003).

### **Chapter 3. Schools and Students**

#### **§301. Cosmetology Course Requirements**

A. Curriculum. The cosmetology curriculum shall consist of at least 1500 hours of instruction which shall include but not be limited to the following.

1. Scientific Concepts
  - a. Infection Control
  - b. OSHA Requirements
  - c. Human Physiology
  - d. Chemical Principles
  - e. Hair and Scalp
  - f. Nails
2. Physical Services
  - a. Shampoo
  - b. Draping
  - c. Rinses and Conditioners
  - d. Scalp
  - e. Facials
  - f. Makeup
  - g. Manicuring
3. Chemical Services
  - a. Hair Coloring
  - b. Hair Lightening
  - c. Chemical Waving
  - d. Chemical Relaxing
4. Hair Designing
  - a. Hair Shaping
  - b. Hair Cutting
5. Louisiana Cosmetology Act and Rules and Regulations

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:326 (March 2003).

#### **§303. Esthetics Course Requirements**

A. Curriculum. The esthetics curriculum shall consist of at least 750 hours of instruction which shall include but not be limited to the following.

1. Scientific Concepts
  - a. Sanitation and Sterilization
  - b. Human Physiology and Anatomy
  - c. Skin Histology
  - d. Skin Diseases and Disorders
  - e. Nutrition
  - f. General Chemistry
2. Services
  - a. Skin Analysis
  - b. Draping

- c. Product Selections
- d. Cleansing Procedure
- e. Selecting and Employing Massage
- f. Selecting and Employing Mask Therapy
- g. Electricity and Various Electrical Apparatus
- h. Hair Removal
- i. Hazards to Skin
- j. Aromatherapy
- k. Spa
- l. Makeup

#### **3. Louisiana Cosmetology Act and Rules and Regulations**

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:326 (March 2003).

#### **§305. Manicuring Course Requirements**

A. Curriculum. The manicuring curriculum shall consist of at least 500 hours which shall include but not be limited to the following.

1. Scientific Concepts
  - a. Basic Human Physiology
  - b. Nail Composition
  - c. Chemistry
  - d. Sanitizing and Sterilizing
2. Procedures
  - a. Supplies and Implements
  - b. Artificial and Natural Nail Technology
  - c. Manicure
  - d. Pedicure
  - e. Basic Massage
3. Application and Repair of Artificial and Natural Nails
4. Safety and Infection Control
5. Louisiana Cosmetology Act and Rules and Regulations

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:326 (March 2003).

#### **§307. Instructor Course Requirements**

A. Curriculum. The curriculum for cosmetology instructors, esthetics instructors and manicuring instructors shall consist of at least 500 hours and shall include but not be limited to the following.

1. Teaching Methods
  - a. Classroom Preparation
  - b. Teaching Methods
  - c. Speech
2. Effectiveness of Instruction
  - a. Purpose and Types of Tests
  - b. Selection of Appropriate Testing Methods
  - c. Validity and Reliability of Teaching Methods via Tests
3. Instructor Qualities
  - a. Proper Conduct of Instruction
  - b. Classroom Supervision and Control
4. Learning Environment
  - a. Classroom Conditions
  - b. Keeping Record

- c. Motivation
- d. Assessing Students' Needs
- e. Utilization of Safety Procedures

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:326 (March 2003).

**§309. Examination of Applicants**

A. Eligibility. The following persons shall be eligible to take the written and practical examinations after receiving a clearance from the school last attended and a clearance from the board:

- 1. cosmetology students who have completed 1500 hours and 36 weeks of the cosmetology curriculum; however, cosmetology students who have completed 1000 hours of the cosmetology curriculum may take the written examination;
- 2. esthetics students who have completed 750 hours of the esthetics curriculum;
- 3. manicuring students who have completed 500 hours of the manicuring curriculum;
- 4. instructor students who have completed 500 hours of the instructor curriculum;
- 5. persons holding a cosmetology, esthetics, manicuring or instructor license issued by another state; and
- 6. persons holding a cosmetology, esthetics, manicuring or instructor license issued by another country who have received board approval.

B. Applications. Applications for examinations must be accompanied by a student registration certificate, a photograph of the student, and the \$25 initial license fee.

C. Fees. All fees contractually owed by an applicant to a cosmetology school from which they graduated must be paid before applying for an examination, for a certificate of registration or for a license.

D. Cancellation. Any student who fails to appear for their scheduled examination without proper notification will be required upon reapplication to submit a \$25 administrative fee. Proper notification shall be made by contacting the board office seven days prior to the scheduled examination or in the case of an emergency 24 hours prior to the scheduled examination.

E. Examination. Students must bring a mannequin with the head styled for comb-out to the examination. Students will be required to perform further practical work on the mannequin during the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(4) and R.S. 37:586.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003).

**§311. Reporting Student Hours**

A. Registration. Schools shall register students with the board within 60 days after the students start school. The maximum number of hours which will be accepted by the board at the time of registration is the number of hours earned within 60 days preceding registration.

B. Hours. Schools must register each student's hours with the board in the following manner:

- 1. at the completion of 1,000 hours (2/3 of curriculum) and completion of the curriculum for cosmetology students;

- 2. at the completion of the curriculum for esthetics students;

- 3. at the completion of the curriculum for manicuring students; and

- 4. at the completion of the curriculum for instructor students.

C. Attendance. School owners must certify the student's attendance for hours reported to the board. No overtime or double time shall be permitted. Only hours devoted to the prescribed curriculum shall be included. Students shall not earn more than 48 hours of training in any calendar week.

D. Reports. The hour report submitted by the school to the board shall be signed by the senior instructor, or in the absence of the senior instructor, the report shall be signed by the person in charge, who shall designate his capacity as acting senior instructor. The report shall include a list of the current instructors.

E. Dropped Students. Schools are required to provide to the board the names of the students who drop from their rolls within 30 days and to provide the number of hours earned during the student's attendance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:598.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003).

**§313. Transfer Students**

A. Out-of-State. The board will accept student hours certified by an out-of-state school provided that the hours are transferred to a Louisiana school. The Louisiana school shall evaluate the student's transcript and determine how many hours of the curriculum have been completed by the student. The school shall submit to the board a verification of the number of transferable hours which shall include supporting data, a certificate from the out-of-state school and a certificate from the state board which supervises the school.

B. In-State. When enrolling a transfer student from another school within Louisiana, the school owner must provide the board with the following:

- 1. student enrollment application indicating on the application that it is a re-registration;
- 2. certification of payment of contractual fees owed to the former school; and
- 3. if the student has transferred schools more than once, a re-registration fee of \$10 must accompany the application.

C. Notice of Termination. Any students transferring hours from one school to another is required to submit a Notice of Termination Form within 30 days of student's drop-out date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:598(A)(4).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003).

**§315. Responsibilities of Schools**

A. Enrollment. Upon enrollment of a student the school must provide the following to the board:

- 1. student enrollment application;
- 2. the student's birth certificate, birth card or driver's license;
- 3. proof of completion of education equal to the tenth grade;

4. a photograph of the student; and
5. the student registration fee.

B. Reports. Schools must maintain hour reports for a minimum of three years.

C. Mannequin. Schools must furnish to each student, at a nominal fee, a mannequin upon which the student may practice and may use for the practical examination.

D. Professional Department. Schools shall not have professional departments within the school, nor shall any school owner own or operate a beauty shop or salon in connection with a school. School staff members shall not practice in an adjoining beauty shop or salon, while school is in session. There shall be no unsealed connecting doors between a beauty shop or salon under the same roof.

E. Faculty. All schools must maintain a faculty of at least one instructor per every 20 students enrolled. Each faculty shall include a senior instructor who shall have at least 18 months teaching experience in an accredited school of cosmetology. The senior instructor shall supervise all other faculty members.

F. Senior Instructor. In the event that the senior instructor resigns or takes a leave of absence, the school shall advise the board monthly of their efforts to employ a new senior instructor.

G. School Closing. Any school owner which intends to close any school shall notify the board in writing as soon as practicable. Copies of documents relative to closure must be provided to the board office, including, but not limited to, teach-out plans and teach-out agreements. The board shall be the custodian of records for any school which closes.

H. Student Work. Schools shall post a legible sign not smaller than 6 inches by 10 inches, at the entrance of each school reading: "Student Work Only".

I. Compensation. Schools shall not pay commissions or any other compensation, discount or fee to a cosmetology, esthetics or manicuring student for work in training done by them.

J. Registrations. All student registrations must be posted in a conspicuous place.

K. Text Books. Schools must provide a textbook to each student upon registration.

L. Library. Schools must maintain a library which shall be available to all students.

M. Hours. Schools must post a monthly summary of hours earned by each student.

N. Cosmetology Services. No employee or owner of a school shall knowingly permit students to perform any professional cosmetology work for which they do not possess a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:595.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003).

### **§317. Equipment Required in Cosmetology Schools**

A. Equipment. Every cosmetology school must have a practical work room and working equipment including:

1. six shampoo bowls;
2. six hair dryers;
3. three manicuring tables;
4. cold wave equipment sufficient for six permanents;

5. sufficient trays for supplies;
6. covered waste containers sufficient to maintain sanitation in the school;
7. one wet and dry sanitizer for each occupied station;
8. six mannequins;
9. twenty working stations;
10. covered containers for soiled towels; and
11. locker space for each student.

B. Classroom. Every cosmetology school must have a classroom with a minimum of 400 square feet, entirely separate from the practical work room, equipped with the following:

1. modern anatomy charts;
2. marker or chalk board, minimum 4 feet by 6 feet; and
3. sufficient seating with facilities for classroom work, such as taking notes.

C. Use of Rooms. The area designated for classrooms or practical work rooms shall not be used for any other purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:595(A)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:328 (March 2003).

### **§319. Field Trips; Seminars; Workshops; Shows and Community Service**

A. Schools are permitted but not required to offer to their students an opportunity to earn credit hours for cosmetology related field trips, seminars, workshops, shows and community service as follows:

1. up to 40 hours for cosmetology students;
2. up to 15 hours for manicuring students;
3. up to 20 hours for esthetics students; and
4. up to 20 hours for instructor students.

B. Documentation. In order for students to receive credit for cosmetology related field trips, seminars, workshops, shows or community service, the school must annotate the course outlines to reflect the maximum hours which may be earned. Example: Cosmetology Course Outline-40 hours during the length of the course are assigned to cosmetology-related field trips, seminars, workshops and community service.

C. Participation. Participation in field trips, seminars, workshops, shows or community service by students is voluntary. Students who choose not to participate must be given other related assignments.

D. Monitoring. An instructor must accompany students on any field trip. Attendance shall be monitored at the beginning, midpoint and close of the function and documented by the instructor. Travel time shall not be included in the hours credited for the field trip.

E. Documentation. Schools must retain documentation of field trips, seminars, workshops, shows and community service hours.

F. Compensation. No school or student shall accept any compensation for cosmetology related field trips, seminars, workshops, shows or community service. All money collected for community service must be paid to the charity for which the function was sponsored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).



HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:328 (March 2003).

### **§321. Responsibilities of Students**

A. Students. Students shall not be allowed to perform any professional cosmetology work for which the student does not possess a license, prior to completion of the curriculum passing the examination administered by the board and receipt of an initial license. Any student found to be in violation of this rule will forfeit all hours completed in beauty school and any school knowingly permitting a serious violation of this section shall be subject to suspension or revocation of its license.

B. Services. Students attending beauty school shall not provide cosmetology services whether for a fee or not in any licensed beauty salon or shop or in any premises which is not licensed unless the student possesses a license to perform such services. This regulation applies even though the student's immediate family or the student themselves has an ownership interest in the beauty shop salon in question, or jeopardy of the student losing a portion of or all their hours.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Louisiana State Board of Cosmetology, LR 29:329 (March 2003).

## **Chapter 5. Licensees**

### **§501. Booth Renters (Formerly LAC 46:XXXI.1103)**

A. Agreement. A copy of the executed agreement between the salon owner and the cosmetologist shall be submitted to the board at the time of application for a booth rental permit.

B. Form. The board will furnish a contractual agreement form for a nominal fee. In the event an agreement is not on the form supplied by the board, the agreement shall contain the following information:

1. a statement indicating that both parties agree that the cosmetologist is not an employee of the salon;
2. a statement indicating the salon owner has no right to control the methodology used by the cosmetologist to produce a given result; and
3. a statement indicating the basis of the cosmetologist's compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:592.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003).

### **§503. School Licenses Issued to Legal Entities**

A. School License. Any corporation, association, partnership or other legal entity applying for a license to operate a school shall provide the following to the board:

1. the name and address of each place of business maintained by the entity in the state of Louisiana;
2. a financial statement;
3. the articles of incorporation, articles of organization, partnership agreement or other organizational documentation;
4. the names, addresses and percentage interest of each partner, member or stockholder, for the purpose of this subsection a landlord or lessor of equipment paid a percentage exceeding 20 percent shall be considered an owner or partner; and

5. the name and address of individual managing officer or partner.

B. Ownership change. A change of ownership of 35 percent or greater shall require submission of all information required by Subsection A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003).

### **§505. Master Cosmetology Instructors**

A. Gold Stamp. Any instructor who completes 16 hours of approved continuing education each year shall receive a gold stamp on his or her license.

B. Master Instructors. All instructors with a minimum of five years teaching experience and who attend 16 hours of approved continuing education each year will receive a master instructor license with an official title, MCI.

C. Reinstatements. In order to maintain the master instructor license the instructor must attend a minimum of 16 hours of approved continuing education each year. If a master instructor does not attend the 16 hours during one year, the master instructor license will be reinstated after two consecutive years of completing 16 hours of approved continuing education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003).

## **Chapter 7. Safety and Sanitation Requirements**

### **§701. Sanitation Requirements for Cosmetology Salons and Cosmetology Schools**

A. Sanitation. Beauty shops, salons and cosmetology schools are declared to be businesses affecting the public health, safety and welfare; therefore, sanitation procedures must be followed. Every beauty shop, salon and cosmetology school shall be adequately lighted, well ventilated, and kept in a clean and sanitary condition at all times.

B. Equipment. All beauty shops and salons and cosmetology schools shall have available sterilizers or sanitizers which shall be used in accordance with the manufacturer's instructions. All instruments, including disposable equipment shall be kept clean and sanitized.

C. Combs and Brushes. Combs and brushes must be thoroughly cleaned with soap and water after each patron has been served and then immersed in a solution of one part water to 10 parts of sodium hypochlorite (bleach), EPA hospital grade disinfectant or some equally efficient disinfectant used in accordance with the manufacturer's instructions.

D. Shampoo Boards. Shampoo boards and bowls must be kept clean at all times.

E. Towels. Towels used for patrons shall be clean and freshly laundered and kept in a closed cabinet designated for clean towels only.

F. Soiled Towels. Soiled towels should be kept in a container.

G. Hand Washing. Cosmetologists shall wash their hands with soap and fresh water immediately before serving each patron.

H. Fluids and Powders. Fluids and powders shall be applied to a patron from a shaker type dispenser so as to prevent the bottle or shaker from contacting the client.

I. Structure. Floor, walls and fixtures must be kept in a clean and sanitary condition at all times.

J. Flooring. Carpet or floor cloth shall not be used in any work area.

K. Animals. No facility licensed by the board shall permit any live animal to be present on the premises except for an animal certified to assist a disabled person.

L. Water. All facilities shall have an adequate supply of both hot and cold running water and a sufficient number of wash basins on the facility premises.

M. Clippings. Hair clippings on the floor must be swept up after each client and shall be disposed of in a covered container.

N. Tools and Implements. All tools and implements which come in direct contact with a client and shall be sterilized, sanitized or disposed of after each use.

O. Storage. New and/or sanitized and cleaned tools and implements shall be stored separately from all others.

P. Work Stations. Storage cabinets, work stations and vanities shall be cleaned after each client.

Q. Blood Spill Kits. Blood spill kits must be available in every salon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003).

### **§703. Salons Located in Buildings Housing Other Facilities**

A. Separate Room. No salon shall be established or maintained in a home or in connection with a business where food is handled unless a separate room is provided therefore.

B. Home Salon. Any salon in a home or in connection with a place where food is handled shall be separated from the living quarters or place where food is handled by walls or other permanent structures. There shall be separate outside entrances leading to the salon and to the living quarters or any place where food is handled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:330 (March 2003).

### **§705. Equipment Required in Salons Offering Hair Dressing Services**

A. Equipment. Hair dressing shall not be performed in any beauty shop or salon unless the following items are available for use:

1. shampoo bowl for shop purpose only;
2. utility chair;
3. dryer;
4. covered waste container;
5. cabinet for accessories;
6. cabinet for clean linens;
7. container for soiled linens; and
8. wet and dry sterilizer for each occupied station or electric sterilizer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:330 (March 2003).

### **§707. Equipment Required in Salons Offering Esthetics Services**

A. Equipment. Esthetics shall not be performed in any salon unless the following items are available for use:

1. flexible treatment bed or chair, capable of multi-positions for customer and skin care therapist;
2. stool for therapist;
3. trolleys or utility table, large enough to support cosmetic preparations and bowls;
4. small sterilizer for implements (i.e., tweezers, extractors, small equipment);
5. magnifying lamp for skin analysis (five dioptic recommended);
6. closed storage cabinet with a wash basin or sink for hand washing and towel storage;
7. facial steamer;
8. the following basic implements:
  - a. two stainless steel bowls;
  - b. covered waste bin;
  - c. non-sterile cotton pads, cloths, or disposable sponges;
  - d. towels, clinic gowns, head bands, washable blanket;
  - e. tissue, cotton tipped swabs, spatulas, gauze;
  - f. containers with lids for storage or disposable items;
  - g. tweezers;
  - h. sheets;
  - i. mask brushes;
  - j. cleansers, astringents, treatment creams; and
  - k. lancets, leak and puncture proof container for disposal of lancets, and gloves (disposable PVC).

B. Waxing. If waxing is offered, the following items shall be available for use:

1. wax pot and wax;
2. disposable applicators;
3. wax remover for skin and ointment;
4. cleanser for skin;
5. wax equipment cleanser; and
6. comb and scissors for trimming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:330 (March 2003).

### **§709. Equipment Required in Salons Offering Manicuring Services**

A. Manicuring Equipment. Manicuring shall not be performed in any salon unless the following items are available for use:

1. manicuring sterilizer;
2. covered waste containers;
3. cabinet for accessories;
4. cabinet for clean linens;
5. container for soiled linens;
6. manicuring table; and
7. lavatory with hot and cold running water.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:330 (March 2003).

#### **§711. Procedures for Esthetics Services**

A. Exfoliation. Cosmetologists, estheticians and persons authorized to perform microdermabrasion shall not exfoliate or perform any procedure which will affect the dermis or skin below the epidermis. Cosmetologists, estheticians and persons authorized to perform microdermabrasion shall only exfoliate or perform services which affect the epidermis.

B. Procedures. Cosmetologists performing esthetics services, estheticians and persons authorized to perform microdermabrasion shall:

1. wash his or her hands using an antimicrobial skin wash prior to coming into contact with any client;
2. wash all implements with antimicrobial wash prior to sanitization or sterilization;
3. wash all towels and linens in disinfecting detergent; and
4. place all used disposable items in a closed, bagged, trash container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003).

#### **§713. Procedures for Manicuring Services**

A. All manicurists and cosmetologists performing manicuring services shall:

1. wash his or her hands using antimicrobial wash prior to performing any manicuring service;
2. require the customer to wash area on which service is to be performed with an antimicrobial wash prior to any service being performed;
3. wash all implements with antimicrobial wash prior to sterilization;
4. wash all towels and linens in disinfecting detergent; and
5. place all used disposable items in a closed, bagged, trash container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003).

#### **§715. Disposable Equipment**

A. The following items shall be considered disposable:

1. facial tissues;
2. sponges;
3. cloths;
4. extraction tissue;
5. lancets;
6. gloves;
7. wax strips and sticks;
8. tissues;
9. cotton pads; and
10. emery boards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003).

## **Chapter 9. Inspections**

### **§901. Access of Inspectors**

A. Access. Inspectors and employees of the board are entitled to enter any premises licensed by the board, to interview any person present at the facility and to examine all work records pertaining to the cosmetology profession during the regular business hours of the facility.

B. Information. Any information gained by an inspector or employee of the board during an inspection shall remain confidential unless the information is to be offered as evidence in an administrative hearing or court proceeding concerning a license issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(A)(10).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003).

### **§903. Violations**

A. Citations. Inspectors may issue citations for violations and impose and collect fines for any violation of the Cosmetology Act or any rule or regulation adopted by the board provided that the licensee waives his or her right to a formal hearing before the board.

B. Violation Notice. Inspectors must present the licensee with the a duplicate copy of the violation notice.

C. Evidence. Any licensee who disputes the contents of an inspector's report may submit contrary evidence in writing to the board or present evidence to the board at the assigned hearing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(5)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003).

## **Chapter 11. Special and Temporary Permits**

### **§1101. Special Permits**

A. Special Permits. The board shall issue the following special permits to any person who meets the requirements set forth in the board's rules:

1. alternative hair design;
2. microdermabrasion;
3. shampoo assistants; and
4. make-up artists.

B. All special permits issued by the board shall be valid for a period of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003).

### **§1103. Special Permit for Microdermabrasion**

A. Microdermabrasion. Beginning April 1, 2003 a special permit authorizing the performance of microdermabrasion using a nonprescriptive device shall be issued to:

1. a licensed esthetician; or
2. a licensed cosmetologist or electrologist who

presents satisfactory evidence of completion of at least 200 hours of study in esthetics or evidence of practicing esthetics for a period of at least one year.

B. Training. In addition to the requirements set forth in Subsection A, the applicant must present satisfactory

evidence of completion of a training course on the operation of the microdermabrasion equipment to be used.

C. Proof Required. For the purpose of this Section, evidence of practicing esthetics shall be demonstrated by presenting the following:

1. copies of W-2's or 1099's and a sworn statement by the issuer indicating that the individual worked the equivalent of 25 per week for at least 48 weeks during a period of one year; or

2. copies of income tax returns, if self-employed, and sworn statements from at least five clients indicating that esthetics services were performed by the applicant.

D. Permit Required. No cosmetologist or esthetician may perform microdermabrasion without a current special permit authorizing the performance of microdermabrasion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003).

#### **§1105. Special Permit for Alternative Hair Design**

A. Alternative Hair Design. Beginning April 1, 2003, a special permit authorizing the practice of alternative hair design shall be issued to any person who presents evidence to the board of completion of the alternative hair design curriculum and successfully passes the exam administered by the board.

B. Grandfathering. Notwithstanding the provisions of Subsection A, any person who applies for a special permit to practice alternative hair design on or before June 30, 2003 who satisfactorily demonstrates two years of experience in the practice of alternative hair design shall be issued a permit without the necessity of taking the alternative hair exam.

C. For the purpose of this Section experience shall be demonstrated by any of the following:

1. copies of W-2's or 1099's and a sworn statement by the issuer indicating that the individual worked the equivalent of 25 per week for at least 48 weeks per year during a two year period in the practice of alternative hair design;

2. copies of income tax returns, if self-employed, and sworn statements from at least five clients indicating that alternative hair design services were performed by the applicant;

3. certification from a school indicating that the applicant has received at least 400 hours of instruction in alternative hair design which were completed prior to October 1, 2002; or

4. documentation indicating that the applicant has been a member of a trade association which has as its stated purpose the education of individuals in a field which includes alternative hair design for at least two years prior to January 1, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003).

#### **§1107. Alternative Hair Design Curriculum**

A. Curriculum. The alternative hair design curriculum shall consist of at least 1000 hours of instruction which shall include but not be limited to the following.

1. History Overview
  - a. Ancient Origins of Braiding
  - b. Traditional Multi-Cultural Braid Styles
  - c. The Multi-Cultural American Hair Experience
2. Bacteriology and Sanitation
  - a. Types of Bacteria
  - b. Growth and Reproduction of Bacteria
  - c. Prevention of Infection and Infection Control
  - d. Use of Antiseptics, Disinfectants and Detergents
3. Client Consultation
4. Hair Types and Hair Structure
5. Scalp Diseases and Disorders
6. Shampoos, Conditioners, Herbal Treatments and Rinses for Synthetic Hair Only
7. Braiding and Sculpting
8. Louisiana Cosmetology Act and Rules and Regulations

AUTHORITY NOTE: Promulgated in accordance with R.S.37:575(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003).

#### **§1109. Special Permit for Shampoo Assistants**

A. Shampoo Assistants. Beginning January 1, 2003, a special permit authorizing the performance of shampooing shall be issued to any person who:

1. applies on or before June 30, 2003 and presents evidence to the board of six months of continuous employment as an assistant to a licensed cosmetologist prior to January 1, 2003; or

2. has successfully completed at least 40 hours of training in shampooing, draping and rinsing and passed the test administered by the board.

B. Grandfathering. For the purpose of this Section continuous employment shall be demonstrated by copies of W-2's or 1099's and a sworn statement by the issuer indicating that the individual worked the equivalent of 25 per week for at least 24-weeks per year during a 6-month period as a shampoo assistant under the supervision of a licensed cosmetologist.

C. Cosmetologist. No person holding current cosmetology license shall be required to obtain a special permit to shampoo.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003).

#### **§1111. Special Permit for Make-Up Application**

A. Make-Up Application. Beginning April 1, 2003, a special permit authorizing the practice of application of cosmetic preparations or make-up shall be issued to any person who presents evidence to the board of completion of 40 hours of training in the application of cosmetic preparations or make-up.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003).

#### **§1113. Temporary Permits**

A. Permits. The board shall issue permits to persons who wish to participate in hair shows, beauty pageants or

demonstrations who are licensed to practice cosmetology, esthetics or manicuring in another state.

B. Applications. Applications for temporary permits shall be submitted to the board for review not less than 30 days prior to the requested period of the permit.

C. The 40-hour curriculum for make-up artists shall include a minimum of:

1. two hours of study if composition of facial cosmetics;

2. two hours of study and two hours of practical work in recognition of facial shapes;

3. two hours of study make-up cosmetics and purpose;

4. three hours of study and 12 hours of practical work in make-up application;

5. three hours of study and 10 hours of practical work in procedure for corrective make-up;

6. one hour of study and two hours of practical work in procedure for evening make-up;

7. one hour of study in safety and sanitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003).

### **§1115. Special Permits**

A. Transfer. Hours of study used to obtain any special permit authorized by this Chapter shall not be counted toward the number of hours necessary to receive any other license issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:333 (March 2003).

## **Chapter 13. Disciplinary Proceedings**

### **§1301. Informal Proceedings**

A. Notice. If the board receives information indicating that a licensee has violated the Cosmetology Practice Act or the rules and regulations adopted by the board, the executive director shall provide the licensee with a written informal notice.

B. Conference. The licensee shall respond in writing to the board's informal notice within 10 days of receipt by providing the board with a written statement containing any information related to the allegations of the informal notice which would show compliance with all requirements for retention of his or her license. In lieu of providing a written statement, the licensee may request an informal conference with the executive director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:333 (March 2003).

### **§1303. Formal Proceedings**

A. Complaint. In the event that the matter is not resolved during the informal hearing, the executive director shall file a formal complaint which shall be forwarded to the licensee at the address on file with the board.

B. Hearing. No hearing shall be conducted prior to 20 business days following the filing of the formal complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:333 (March 2003).

## **§1305. Procedures**

A. Hearings. All hearings conducted before the board shall be in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:333 (March 2003).

## **Chapter 15. Declaratory Orders**

### **§1501. Declaratory Orders**

A. Application. Any person desiring an interpretation of the Cosmetology Act or the rules promulgated in accordance with the Cosmetology Act shall make application to the board on a form provided by the board.

B. Hearing. An application for a declaratory order shall be heard within 60 days of receipt.

C. Ruling. The board shall issue a ruling on an application for declaratory order within 30 days of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:333 (March 2003).

## **Chapter 17. Miscellaneous Provisions**

### **§1701. Public Comments at Board Meetings**

A. Comments. 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 chairman or the executive director no later than the beginning of the meeting. 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 30 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 Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:333 (March 2003).

### **§1703. Services Performed at the Residence of a Disabled Person**

A. Services. A cosmetologist, esthetician or manicurist may perform services at the residence of a client who is chronically ill or disabled.

B. Requirements. A client shall be considered chronically ill or disabled if:

1. the client provides the cosmetologist, esthetician or manicurist with a physician's certificate indicating that the client is chronically ill or disabled;

2. the client provides the cosmetologist, esthetician or manicurist with evidence that the client has been awarded Social Security Disability or Supplemental Security Income Disability Benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(15).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:333 (March 2003).

#### **§1705. Destruction of Premises**

A. Inspection. When any school or salon made unusable by virtue of storm, fire, flood or any other act of God or by virtue of expropriation proceedings and the premises selected to permanently replace such facility will be inspected without an inspection fee, provided that such facility is replaced within six months of its destruction.

B. Reconstruction. Any school or salon which is repaired or replaced in its exact location will be acceptable provided that it is reconstructed in no less size that existed prior to its destruction.

C. Temporary Premises. When temporary premises are necessary for the continuance of operation during the repair, the board member for the area involved may approve such premises provided such premises are temporary with a specific termination date set forth for their use and further provided that such premises are sanitary and sufficient for use during the stated time period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:334 (March 2003).

#### **§1707. Remodeling**

A. Application. When any school or salon desires to remodel its premises, application shall be made to the board.

B. Temporary Premises. If remodeling requires the use of temporary premises for the continuance of operation during remodeling, the board member for the area may approve such premises as are adequate provided such premises are sanitary and sufficient for use during the stated time period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:334 (March 2003).

#### **§1709. Picture Identification**

A. All licensee and permittees shall have in their possession a picture identification at any time at which a service is being performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:334 (March 2003).

#### **§1711. NSF Checks**

A. Late Fee. If a check is received for the renewal of license which is returned to the board by the bank due to non-sufficient funds and is not validated by the licensee or permittee by the expiration date will be responsible for payment of a late fee in addition to any bank charge imposed on the board.

B. Restoration. If a check is received for restoration of a license which is returned to the board by the bank due to non-sufficient funds, the applicant's license shall be subject to revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:334 (March 2003).

#### **§1713. Cheating on Examinations**

A. Eligibility. Any person who cheats on an examination administered by the board shall be disqualified from taking any examination administered by the board for a period of at least three months. Any person who cheats on a subsequent examination shall be ineligible to register for any examination administered by the board without board approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:334 (March 2003).

Saraphia T. Wilson  
Executive Director

0303#023

### **RULE**

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

#### **EPO Plan of Benefits C Accumulation of Deductibles, Co-Insurance, and Out-of-Pocket Expenses (LAC 32:V.301, 601, 701 and 703)**

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the EPO plan document relative to the accumulation of deductibles, co-insurance and out-of-pocket expenses. The reason for this action is to align the accumulation of deductibles, co-insurance, and out-of-pocket expenses with the plan year (July 1- June 30) rather than the calendar year (January 1-December 31).

Accordingly, OGB has amended the following Sections to become effective upon promulgation.

#### **Title 32**

#### **EMPLOYEE BENEFITS**

#### **Part V. Exclusive Provider (EPO) Plan of Benefits Chapter 3. Medical Benefits**

#### **§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person**

A. - A.23. ...

24. not subject to the annual deductible:

a. one pap test for cervical cancer per *plan year*;

b.i. ...

ii. one mammogram during a period of two years for any person who is 40-49 years of age, or more frequently if recommended by a physician;

iii. ...

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 25:1810 (October 1999), LR 28:478 (March 2002), LR 29:334 (March 2003).

**Chapter 6. Definitions**

**§601. Definitions**

**Accidental Injury** Ca condition occurring as a direct result of a traumatic bodily injury sustained solely through accidental means from an external force. With respect to injuries to teeth, the act of chewing does not constitute an injury caused by external force.

\*\*\*

**Benefit Payment** Cpayment of eligible expenses incurred by a covered person during a plan year at the rate shown under percentage payable in the schedule of benefits.

**Deductible** Cthe amount of covered charges for which no benefits will be paid. Before benefits can be paid in a plan year, a covered person must meet the deductible shown in the schedule of benefits.

**Family Unit Limit** Cthe dollar amount shown in the schedule of benefits has been incurred by three members of a family unit toward their plan year deductibles. The deductibles of all additional members of that family unit will be considered satisfied for that year.

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**Plan Year** Cthat period commencing at 12:01 a.m., July 1, standard time, at the address of the employee, or the date the covered person first becomes covered under the plan and continuing until 12:01 a.m., standard time, at the address of the employee on the next following July 1. Each successive plan year will be the period from 12:01 a.m., July 1, standard time, at the address of the employee to 12:01 a.m., the next following July 1.

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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 25:1820 (October 1999), LR 29:335 (March 2003).

**Chapter 7. Schedule of Benefits C EPO**

**§701. Comprehensive Medical Benefits**

A. Eligible expenses for professional medical services are reimbursed on a fee schedule of maximum allowable charges. All eligible expenses are determined in accordance with plan limitations and exclusions.

	Non-EPO	EPO
Lifetime Maximum for all benefits except outpatient prescription drug benefits per person	\$2,000,000	
Lifetime Maximum for all Outpatient Prescription Drug Benefits per person	\$250,000	

1. Deductibles

	Non-EPO	EPO
Inpatient deductible per day, maximum of 5 days per admission (waived for admissions at PPO hospitals)	\$50	0
Emergency room charges for each visit unless the covered person is hospitalized immediately following emergency room treatment (prior to and in addition to plan year deductible)	\$150	0

Professional and other eligible expenses, employees and dependents of employees, per person, per plan year Family unit maximum (3 individual deductibles)		
Professional and other eligible expenses, retirees and dependents of retirees, per person, per plan year Family unit maximum (3 individual deductibles)		
Professional and other eligible expenses, other than physician office visits, per person, per plan year Family unit maximum (3 individual deductibles)	\$300	0

2. Percentage Payable after Co-Payments and Satisfaction of Applicable Deductibles

Eligible expenses incurred at an EPO	n/a	100%
Eligible expenses incurred at a non-EPO	70%	n/a
Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%	n/a
Eligible expenses incurred at a non-PPO/non-EPO When not available at an EPO/PPO or out of state	80%	n/a
Eligible expenses in excess of \$10,000* per person per plan year	100%	n/a
Eligible expenses at EPO are based upon contracted rates.		
Eligible expenses at non-EPO are based upon the OGB's fee schedule. Charges in excess of the fee schedule are not eligible expenses and do not apply to the coinsurance threshold.		

- 3. ...
- 4. Prescription Drugs (not subject to deductible)

Network Pharmacy	Member pays 50% of drug costs at point of purchase
Maximum co-payment	\$50 per prescription dispensed
Out-of-pocket threshold	\$1,200 per person, per plan year
Co-Pay after Threshold is Reached	
Brand	\$15
Plan pays balance of eligible expense	

B. - E ...

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 25:1823 (October 1999), LR 26:487 (March 2000), LR 27:717 (May 2001), LR 27:1886 (November 2001), LR 28:476 (March 2002), LR 29:335 (March 2003).

**§703. Mental Health and Substance Abuse**

NOTE: Requires prior approval of services.

A. Deductibles

Per person per Plan Year (Separate from Comprehensive Medical Benefits deductible)	\$ 200
Inpatient (Maximum 5 days; \$250 per stay)	\$ 50 per day

B. Benefits

80% of the first \$5,000 of eligible expenses
100 % of eligible expenses over \$5,000 until the Lifetime Maximum for all plan benefits is reached
Up to a maximum of 45 inpatient days per person, per plan year
Up to a maximum of 52 intensive outpatient visits per person, per plan year, inclusive of the outpatient program

NOTE: Two days of partial hospitalization or two days of residential treatment center hospitalization may be traded for each inpatient day of treatment that is available under the 45-day Plan Year maximum for inpatient treatment. A residential treatment center is a 24-hour mental health or substance abuse, non-acute care treatment setting for active treatment interventions directed at the amelioration of the specific impairments that led to admission. Partial hospitalization is a level of care where the patient remains in the hospital less than 24 hours.

1-2 ...

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 25:1824 (October 1999), LR 29:335 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#080

## RULE

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

#### EPO Plan of Benefits Effective Dates and Limitations of Coverage for Pre-Existing Conditions (LAC 32:V.101)

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the EPO plan document relative to effective dates of coverage and the application of pre-existing condition limitations. This action is to conform the plan to requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated pursuant thereto.

Accordingly, OGB has amended the following Section to become effective upon promulgation.

#### Title 32

#### EMPLOYEE BENEFITS

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

#### Chapter 1. Eligibility

#### §101. Persons to be Covered

NOTE: Eligibility requirements apply to all participants in the program, whether in the PPO plan, the EPO plan or an HMO plan.

A. - A.3. ...

#### 4. Re-Enrollment, Previous Employment

a. An employee whose employment terminated while covered, who is re-employed within 12 months of the date of termination will be considered a re-enrollment, previous employment applicant. A re-enrollment previous employment applicant will be eligible for only that classification of coverage (employee, employee and one

dependent, family) in force on the effective date of termination.

b. If an employee acquires an additional dependent during the period of termination, that dependent may be covered if added within 30 days of re-employment.

5. Members of Boards and Commissions. Except as otherwise provided by law, members of boards or commissions are not eligible for participation in the plan. This Section does not apply to members of school boards or members of state boards or commissions who are defined by the participant employer as full time employees.

6. Legislative Assistants. Legislative assistants are eligible to participate in the plan if they are declared to be full-time employees by the participant employer and have at least one year of experience or receive at least 80 percent of their total compensation as legislative assistants.

7. Pre-Existing Condition (PEC) New Employees (on and after July 1, 2001)

a. The terms of the following paragraphs apply to all eligible employees whose employment with a participant employer commences on or after July 1, 2001, and to the dependents of such employees.

b. The program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-Existing Condition" form.

c. Medical expenses incurred during the first 12 months following enrollment of employees and/or dependent will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

d. If the covered person was previously covered under a Group Health Plan, Medicare, Medicaid or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

B. ...

#### C. Dependent Coverage

1. Eligibility. A dependent of an eligible employee or retiree will be eligible for dependent coverage on the later of the following dates:

- the date the employee becomes eligible;
- the date the retiree becomes eligible;
- the date the covered employee or covered retiree acquires a dependent.

#### 2. Effective Dates of Coverage

a. Dependents of Employees. Coverage for dependents will be effective on the date the employee becomes eligible for dependent coverage.

b. Dependents of Retirees. Coverage for dependents of retirees will be effective on the first day of the month following the date of retirement if the employee and his dependents were covered immediately prior to retirement. Coverage for dependents of retirees first becoming eligible for dependent coverage following the date of retirement will be effective on the date of marriage for new spouses, the



date of birth for newborn children, or the date acquired for other classifications of dependents, if application is made within 30 days of the date of eligibility.

D. - D.2. ...

3. Medical expenses incurred during the first 12 months following enrollment of *employee* and/or dependent will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care or treatment was recommended or received during the six-month period immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy

D.4 - I. ...

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 25:1804 (October 1999), LR 27:718 (May 2001), LR 29:336 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#043

**RULE**

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

**EPO Plan of Benefits C Prescription Drugs  
(LAC 32:V.325 and 701)**

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the EPO plan document relative to prescription drugs, increasing the maximum coinsurance amount from \$40 to \$50 per prescription and increasing the out of pocket threshold from \$1,000 to \$1,200. The reason for this action is to fairly distribute the increasing cost of prescription drugs benefits among the plan and those participants who utilize the benefit.

Accordingly, OGB has amended the following Sections to become effective July 1, 2003.

**Title 32**

**EMPLOYEE BENEFITS**

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

**Chapter 3. Medical Benefits**

**§325. Prescription Drug Benefits**

A. - C. ...

1. Upon presentation of the Group Benefits Program Health Benefits Identification Card at a network pharmacy,

the Plan Member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$50 dollars per prescription dispensed. The plan will pay the balance of the eligible expense for prescription drugs dispensed at a network pharmacy. There is a \$1200 per person per Plan Year out-of-pocket threshold for eligible prescription drug expenses. Once this threshold is reached, that is, the Plan Member has paid \$1200 of co-insurance/co-payments for eligible prescription drug expenses, the Plan Member will be responsible for a \$15 co-pay for brand name drugs, with no co-pay for generic drugs. The plan will pay the balance of the eligible expense for prescription drugs dispensed at a network pharmacy.

2. - 5.b. ...

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 \$50 per prescription dispensed.

ii. For a supply of 35-68 days the plan member will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$100 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 \$150 per prescription dispensed.

6. - 7. ...

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), LR 27:717, 718, 719 (May 2001), LR 27:1886 (November 2001), LR 29:337 (March 2003).

**Chapter 7. Schedule of Benefits C EPO**

**§701. Comprehensive Medical Benefits**

A. - A.3. ...

4. Prescription Drugs (not subject to deductible)

Network Pharmacy	Member pays 50% of drug costs at point of purchase
Maximum co-payment	\$50 per prescription dispensed
Out-of-pocket threshold	\$1,200 per person, per <i>plan year</i>
Co-Pay after Threshold is Reached	
Brand	\$15
Generic	No co-pay
Plan pays balance of eligible expense	

B. - E. ...

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 25:1823 (October 1999), LR 26:487 (March 2000), LR 27:717, 719 (May 2001), LR 27:1886 (November 2001), LR 28:476 (March 2002), LR 29:337 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#044

**RULE**

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

**EPO Plan of Benefits C Retiree Coverage  
(LAC 32:V.101)**

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to retiree coverage, providing that retirees who return to active employment will continue to be considered as retirees for the purposes participation in OGB plans. The reason for this action is to establish consistent administration of benefits for retirees in light of recent legislation that has resulted in an increase in the number of retirees returning to active employment.

Accordingly, OGB has amended the following Section to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

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

**Chapter 1. Eligibility**

**§101. Persons to be Covered**

NOTE: Eligibility requirements apply to all participants in the program, whether in the PPO Plan, the EPO Plan or an HMO plan.

A. ...

B. Retiree Coverage

1. Eligibility

a. Retirees of participant employers are eligible for retiree coverage under this plan.

b. An employee retired from a participant employer may not be covered as an employee of another participant employer.

c. Retirees are not eligible for coverage as overdue applicants.

2. Effective Date of Coverage

a. Retiree coverage will be effective on the first day of the month following the date of retirement, if the retiree and participant employer have agreed to make and are making the required contributions.

C. - H. ...

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 25:1804 (October 1999), LR 27:718 (May 2001), LR 29:338 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#045

**RULE**

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

**EPO Plan of Benefits C Well-Adult Care Expenses  
(LAC 32:V.301 and 701)**

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to well adult care expenses. The changes are intended to clarify existing provisions of the plan relative to benefits for well-adult care expenses.

Accordingly, OGB has amended the following Sections to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

**Part V. Exclusive Provider (EPO) C Plan of Benefits**

**Chapter 3. Medical Benefit**

**§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person**

A. - A.23.b.ii. ...

c. well-adult care expenses not subject to the annual deductible, but limited to a maximum benefit of \$200.00:

i. age 16 until age 40 C \$200.00 during a 3-year period;

ii. age 40 until age 50 C \$200.00 during a 2-year period;

iii. age 50 and over C \$200.00 during a 1-year period;

24. - 32. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1830 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:480 (March 2002), LR 29:338 (March 2003).

**Chapter 7. Schedule of Benefits C EPO**

**§701. Comprehensive Medical Benefits**

A. - B. ...

C. Well Care

1. - 2. ...

3. Well Adult (No deductible C limited to a maximum benefit of \$200)

Age 16-39 - \$200 during a 3-year period	<sup>2</sup> See % payable below
Age 40-49 - during a 2-year period	<sup>2</sup> See % payable below
Age 50 and over - \$200 during a 1-year period	<sup>2</sup> See % payable below

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees' Group Benefits Program, LR 25:1823 (October 1999), amended LR 26:487 (March 2000), LR 27:717 and 719 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1886 (November 2001), LR 28:476 (March 2002), LR 28:2342, 2343 (November 2002), repromulgated LR 28:2509 (December 2002), amended LR 29:338 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#046

**RULE**

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

PPO Plan of Benefits Accumulation of Deductibles,  
Co-Insurance and Out-of-Pocket Expenses  
(LAC 32:III.301, 321, 601, 701 and 703)

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to the accumulation of deductibles, co-insurance and out-of-pocket expenses. The reason for this action is to align the accumulation of deductibles, co-insurance, and out-of-pocket expenses with the plan year (July 1- June 30) rather than the calendar year (January 1-December 31).

Accordingly, OGB has amended the following Sections to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

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

**Chapter 3. Medical Benefits**

**§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person**

A. - A.23. - 23.c.iii. ...

24. not subject to the annual deductible:

a. one pap test for cervical cancer per *plan year*;

b. - b.i ...

ii. one mammogram during a period of two years for any person who is 40-49 years of age, or more frequently if recommended by a physician;

24.b.iii. - 32. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group

Benefits Program, LR 25:1830 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:480 (March 2002) ), LR 29:339 (March 2003).

**§321. Preferred Provider Program**

A. ...

1. If a *covered person* obtains medical services or *hospital* services from an eligible provider who has agreed to provide the services at a mutually agreed upon discount from the maximum medical *fee schedule* or at a per diem or discounted rate from a *hospital*, the *program* will pay, following satisfaction of all applicable *deductibles*, 90 percent of the first \$10,000 of eligible expenses and 100 percent of eligible expenses, except prescription drugs, in excess of \$10,000 for the remainder of the *plan year*, subject to the maximum amount as specified in the schedule of benefits.

2. - 2.a. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1835 (October 1999), amended LR 27:722 (May 2001), LR 29:339 (March 2003).

**Chapter 6. Definitions**

**§601. Definitions**

*Accidental Injury*Ca condition occurring as a direct result of a traumatic bodily injury sustained solely through accidental means from an external force. With respect to injuries to teeth, the act of chewing does not constitute an injury caused by external force.

\*\*\*

*Benefit Payment*Cpayment of eligible expenses incurred by a *covered person* during a *plan year* at the rate shown under percentage payable in the schedule of benefits.

\*\*\*

*Deductible*Cthe amount of covered charges for which no benefits will be paid. Before benefits can be paid in a *plan year*, a *covered person* must meet the *deductible* shown in the schedule of benefits.

\*\*\*

*Family Unit Limit*Cthe dollar amount shown in the schedule of benefits has been incurred by three members of a family unit toward their *plan year deductibles*. The *deductibles* of all additional members of that family unit will be considered satisfied for that year.

\*\*\*

*Plan Year*Cthat period commencing at 12:01 a.m., July 1, standard time, at the address of the *employee*, or the date the *covered person* first becomes covered under the plan and continuing until 12:01 a.m., standard time, at the address of the *employee* on the next following July 1. Each successive *plan year* will be the period from 12:01 a.m., July 1, standard time, at the address of the *employee* to 12:01 a.m., the next following July 1.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1840 (October 1999), amended LR 29:339 (March 2003).

**Chapter 7. Schedule of Benefits–PPO**

**§701. Comprehensive Medical Benefits**

A. ...

1. Deductibles

Inpatient deductible per day, maximum of 5 days per admission (waived for admissions at PPO hospitals)	\$ 50
Emergency room charges for each visit unless the covered person is hospitalized immediately following emergency room treatment (prior to and in addition to plan year deductible)	\$150
Professional and other eligible expenses, employees and dependents of employees per person, per plan year	\$500 \$300
Family unit maximum (3 individual deductibles)	

2. Percentage Payable after Satisfaction of Applicable Deductibles

Eligible expenses incurred at a PPO	90% of negotiated rate
Eligible expenses incurred at a non-PPO when one is available in the PPO region	50%
Eligible expenses incurred at a non-PPO when not available at a PPO or out of state	80%
Eligible expenses incurred when Medicare or other group health plan is primary, and after Medicare reduction	80%
Eligible expenses in excess of \$10,000 per plan year per person	100%

3. ...

4. Prescription Drugs (not subject to deductible)

Network Pharmacy	Member pays 50% of drug costs at point of purchase
Maximum co-payment	\$50 per prescription dispensed
Out-of-pocket threshold	\$1,200 per person, per plan year
Co-Pay after Threshold is Reached	
Brand	\$15
Generic	No co-pay
Plan pays balance of eligible expense	

B. - E. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1843 (October 1999), amended LR 26:488 (March 2000), LR 27:719 (May 2001), LR 27:720 (May 2001), LR 27:722 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1887 (November 2001), LR 28:2345 (November 2002), LR 29:340 (March 2003).

**§703. Mental Health Substance Abuse**

NOTE: Requires prior approval of services.

A. Deductibles

Per person per plan year (Separate from Comprehensive Medical Benefits deductible)	\$ 200
Inpatient (Maximum 5 days; \$250 per stay)	\$ 50 per day

B. Benefits

80% of the first \$5,000 of eligible expenses
100 % of eligible expenses over \$5,000 until the Lifetime Maximum for all Plan benefits is reached
Up to a maximum of 45 inpatient days per person, per plan year
Up to a maximum of 52 outpatient visits per person, per plan year, inclusive of the intensive outpatient program.

Note: Two days of partial hospitalization or two days of residential treatment center hospitalization may be traded for each inpatient day of treatment that is available under the 45-day plan year maximum for inpatient treatment. A residential treatment center is a 24-hour mental health or substance abuse, non-acute care treatment setting for active treatment interventions directed at the amelioration of the specific impairments that led to admission. Partial hospitalization is a level of care where the patient remains in the hospital less than 24 hours.

Expenses incurred for emergency services will only be reimbursed if, after review, the services are determined to be a life-threatening psychiatric emergency resulting in an authorized mental health or substance abuse admission within 24 hours to an inpatient, partial, or intensive outpatient level care. Non-emergent psychiatric or substance abuse problems treated in the emergency room will not be eligible for reimbursement.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1844 (October 1999), LR 29:340 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#047

**RULE**

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

PPO Plan of Benefits Effective Dates and Limitations of Coverage for Pre-Existing Conditions (LAC 32:III.101)

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to effective dates of coverage and the application of pre-existing condition limitations.

This action is to conform the plan to requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated pursuant thereto.

Accordingly, OGB has amended the following Section to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

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

**Chapter 1. Eligibility**

**§101. Persons to be Covered**

Eligibility requirements apply to all participants in the program, whether in the PPO plan, the EPO plan or an HMO plan.

A. - A.3.c. ...

4. Re-Enrollment, Previous Employment

a. An *employee* whose *employment* terminated while covered, who is re-employed within 12 months of the date of termination will be considered a re-enrollment, previous *employment* applicant. A re-enrollment previous *employment* applicant will be eligible for only that classification of coverage (*employee*, *employee* and one *dependent*, *family*) in force on the effective date of termination.

b. If an *employee* acquires an additional *dependent* during the period of termination, that *dependent* may be covered if added within 30 days of re-employment.

5. Members of Boards and Commissions. Except as otherwise provided by law, members of boards or commissions are not eligible for participation in the *plan*. This Section does not apply to members of school boards or members of state boards or commissions who are defined by the *participant employer* as full time *employees*.

6. Legislative Assistants. Legislative Assistants are eligible to participate in the *plan* if they are declared to be full-time *employees* by the *participant employer* and have at least one year of experience or receive at least 80 percent of their total compensation as Legislative Assistants.

7. Pre-Existing Condition (PEC)CNew Employees (on and after July 1, 2001)

a. The terms of the following paragraphs apply to all eligible *employees* whose *employment* with a *participant employer* commences on or after July 1, 2001, and to the *dependents* of such *employees*.

b. The program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-Existing Condition" form.

c. Medical expenses incurred during the first 12 months following enrollment of the *employees* and/or *dependent* will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or *treatment* was recommended or received during the six months immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

d. If the covered person was previously covered under a *group health plan*, Medicare, Medicaid or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring

prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

B. - C. 1.c. ...

2. Effective Dates of Coverage

a. Dependents of Employees. Coverage for *dependents* will be effective on the date the *employee* becomes eligible for *dependent* coverage.

b. Dependents of Retirees. Coverage for *dependents* of *retirees* will be effective on the first day of the month following the date of retirement if the *employee* and his *dependents* were covered immediately prior to retirement. Coverage for *dependents* of *retirees* first becoming eligible for *dependent coverage* following the date of retirement will be effective on the date of marriage for new spouses, the date of birth for newborn *children*, or the *date acquired* for other classifications of *dependents*, if application is made within 30 days of the date of eligibility.

D. Pre-Existing Condition (PEC)COverdue Application

1. - 2. ...

3. Medical expenses incurred during the first 12 months following enrollment of the *employee* and/or *dependent* will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care or *treatment* was recommended or received during the six-month period immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

E. - I. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1825 (October 1999), amended LR 27:721 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:2343 (November 2002), LR 29:341 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#039

**RULE**

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

PPO Plan of Benefits CPrescription Drugs  
(LAC 32:III.323 and 701)

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the PPO plan document relative to prescription drugs, increasing the maximum coinsurance amount from \$40 to \$50 per prescription and increasing the out of pocket threshold from

\$1,000 to \$1,200. The reason for this action is to fairly distribute the increasing cost of prescription drugs benefits among the plan and those participants who utilize the benefit.

Accordingly, OGB has amended the following Sections to become effective July 1, 2003.

**Title 32**

**EMPLOYEE BENEFITS**

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

**Chapter 3. Medical Benefits**

**§323. Prescription Drug Benefits**

A. - C. ...

1. Upon presentation of the Group Benefits Program Health Benefits Identification Card at a network pharmacy, the *plan member* will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$50 dollars per prescription dispensed. The plan will pay the balance of the eligible expense for prescription drugs dispensed at a network pharmacy. There is a \$1200 per person per *plan year* out-of-pocket threshold for eligible prescription drug expenses. Once this threshold is reached, that is, the *plan member* has paid \$1200 of co-insurance/co-payments for eligible prescription drug expenses, the *plan member* will be responsible for a \$15 co-pay for brand name drugs, with no co-pay for generic drugs. The plan will pay the balance of the eligible expense for prescription drugs dispensed at a network pharmacy.

2. - 5.b. ...

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 \$50 per prescription dispensed.

ii. For a supply of 35-68 days the *plan member* will be responsible for payment of 50 percent of the cost of the drug, up to a maximum of \$100 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 \$150 per prescription dispensed.

6. - 7. ...

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

HISTORICALNOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1835 (October 1999), LR 27:720, 721 (May 2001), LR 27:1887 (November 2001), LR 29:342 (March 2003).

**Chapter 7. Schedule of Benefits C PPO**

**§701. Comprehensive Medical Benefits**

A. - A.3. ...

4. Prescription Drugs (not subject to deductible)

Network Pharmacy	Member pays 50% of drug costs at point of purchase
Maximum co-payment	\$50 per prescription dispensed
Out-of-pocket threshold	\$1,200 per person, per <i>plan year</i>
Co-Pay after Threshold is Reached	
Brand	\$15
Generic	No co-pay
Plan pays balance of eligible expense	

B. - E. ...

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

HISTORICALNOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1843 (October 1999), LR 26:488 (March 2000), LR 27:719, 720, 722, 723 (May 2001), LR 29:342 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#048

**RULE**

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

PPO Plan of Benefits C Retiree Coverage  
(LAC 32:III.101)

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the PPO plan document relative to retiree coverage, providing that retirees who return to active employment will continue to be considered as retirees for the purposes participation in OGB plans. The reason for this action is to establish consistent administration of benefits for retirees in light of recent legislation that has resulted in an increase in the number of retirees returning to active employment.

Accordingly, OGB has amended the following Section to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

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

**Chapter 1. Eligibility**

**§101. Persons to be Covered**

NOTE: Eligibility requirements apply to all participants in the program, whether in the PPO Plan, the EPO Plan or an HMO plan.

A. ...

B. Retiree Coverage

1. Eligibility

a. Retirees of participant employers are eligible for retiree coverage under this plan.

b. An employee retired from a participant employer may not be covered as an employee of another participant employer.

c. Retirees are not eligible for coverage as overdue applicants.

2. Effective Date of Coverage

a. Retiree coverage will be effective on the first day of the month following the date of retirement, if the retiree and participant employer have agreed to make and are making the required contributions.

C. - I. ...

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 25:1825 (October 1999), LR 27:721 (May 2001), LR 29:342 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#049

**RULE**

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

PPO Plan of Benefits Well-Adult Care Expenses  
(LAC 32:III.301 and 701)

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), as amended and reenacted by Act 1178 of 2001, 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 finds that it is necessary to revise and amend provisions of the PPO plan document relative to well adult care expenses. The changes are intended to clarify existing provisions of the plan relative to benefits for well-adult care expenses.

Accordingly, OGB has amended the following Sections to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

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

**Chapter 3. Medical Benefits**

**§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person**

A. - A.23.b.ii. ...

c. well-adult care expenses not subject to the annual deductible, but limited to a maximum benefit of \$200:

- i. age 16 until age 40 \$200 during a 3-year period;
- ii. age 40 until age 50 \$200 during a 2-year period;
- iii. age 50 and over \$200 during a 1-year period;

24. ...

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 25:1830 (October 1999), LR 28:480 (March 2002), LR 29:343 (March 2003).

**Chapter 7. Schedule of Benefits—PPO**

**§701. Comprehensive Medical Benefits**

A. - B. ...

C. Well Care

1. - 2. ...

3. Well Adult (No deductible limited to a maximum benefit of \$200)

Age 16-39 - \$200 during a 3-year period
Age 40-49 - during a 2-year period
Age 50 and over - \$200 during a 1-year period

D. - E. ...

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 25:1843 (October 1999), LR 26:488 (March 2000), LR 27:719, 720, 722, 723 (May 2001), LR 27:1887 (November 2001), LR 29:343 (March 2003).

A. Kip Wall  
Chief Executive Officer

0303#050

**RULE**

**Office of the Governor  
Office of Financial Institutions**

CAPCO Definitions (LAC 10:XV.303)

In accordance with Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Office of Financial Institutions hereby amends §303, Definitions Provided by Rule of the Capital Companies Tax Credit Program.

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES AND UCC**

**Part XV. Other Regulated Entities**

**Chapter 3. Capital Companies Tax Credit Program  
§303. Definitions Provided by Rule**

\*\*\*

*Capitalize a Business* for purposes of LAC 10:XV.303. *Investment*(b)(iv) the investment of cash in a business in exchange for common stock, or an equivalent ownership interest. Additionally, this shall include subordinated debt only if 1) it is used to refinance senior debt thereby allowing a qualified Louisiana business to expand; or 2) the CAPCO agrees to subordinate such debt to any current or future senior indebtedness owed by the business, provided that, in the case of future indebtedness, the senior indebtedness is incurred by the portfolio company within three months of the date the CAPCO made the subordinated debt investment.

\*\*\*

*Investment*

a. - b.iv. ...

v. to increase or preserve working capital and/or cash flows for Louisiana operations of the business. However, except as allowed in Clause iv of this Section, this does not include those investments whereby the proceeds of the investment will be utilized to refinance existing debt of the business;

vi. - ix. ...

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1921-2933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division,

LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1128 (September 1997), LR 25:1216 (July 1999), amended by the Office of the Governor, Office of Financial Institutions, LR 29:343 (March 2003).

John D. Travis  
Commissioner

0303#036

## RULE

### Office of the Governor Patient's Compensation Fund Oversight Board

Eligible Healthcare Providers, Practice Groups and  
Qualification and Enrollment in the Fund  
(LAC 37:III.109, 111, 303, 507, 509, 511,  
515, 517, 519, 701, 705, 711, 715, 901, 1101,  
1401, 1403, 1405, 1501, 1503, 1505, and 1507)

The Patient's Compensation Fund Oversight Board, under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., advertises its intent to amend LAC 37:III as follows, to provide additional definitions of eligible healthcare providers, practice groups, and the information required to be furnished to the Oversight Board for qualification and enrollment in the Fund, clarifies the procedure for withdrawal of a security furnished as proof of financial responsibility, clarifies the annual renewal process for enrolled healthcare providers, clarifies the surcharge risk rating for hospitals, clarifies the methods of evidencing financial responsibility to be consistent with current practices, sets forth the requirements of a malpractice complaint, clarifies the requirement to select an attorney-chairman prior to dismissal of a malpractice complaint, and clarifies the authority of the executive director.

#### Title 37

#### INSURANCE

### Part III. Patient's Compensation Fund Oversight Board

#### Chapter 1. General Provisions

#### §109. General Definitions

A. - A.3. ...

\*\*\*

i. is currently actively involved in medical practice and/or providing medical services in Louisiana; and  
ii. has paid the appropriate surcharge for such practice to the fund for their current policy year.

*Qualified Provider* Any provider who has met the statutory requirements for malpractice coverage with the Louisiana Patient's Compensation Fund. Qualified providers may be currently either active or inactive in the practice of medicine in Louisiana, depending on the dates for which they are qualified. So long as the financial responsibility requirements for continued qualification are met, a provider need not be currently enrolled in the PCF.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:168 (February 1992), amended LR 23:68 (January 1997), LR 29:344 (March 2003).

#### §111. Interpretive Definitions

A. As used in these Rules and in the act, the following terms are interpreted and deemed to have the meanings specified.

*Certified Nurse Assistant* Ca certified nurse aide certified by the Board of Examiners of Nursing Facility Administrators, pursuant to R.S. 37:2504, as amended.

\*\*\*

*Nursing Home* Ca private home, institution, building, residence or other place, licensed or provisionally licensed by the Department of Health and Hospitals, pursuant to R.S. 40:2009.2, as amended.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:168 (February 1992), amended LR 29:344 (March 2003).

### Chapter 3. Organization, Functions, and Delegations of Authority

#### §303. Executive Director of the Patient's Compensation Fund Oversight Board

A. - B.7. ...

8. coordination of the defense and disposition of claims against the fund;

9. payment of judgments, settlements, arbitration awards, and medical expenses;

B.10. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:169 (February 1992), amended LR 29:344 (March 2003).

### Chapter 5. Enrollment with the Fund

#### §507. Financial Responsibility: Self-Insurance

A. ...

B. For purposes of §507, upon approval by the board of an application filed by the group, any group of health care providers organized to and actually practicing together or otherwise related by ownership, whether as a corporation, partnership, limited liability partnership or limited liability company, shall be deemed a single health care provider and shall not be required to post more than one deposit. Proof of such status may include a notarized copy of the articles of incorporation, partnership agreement, articles of organization, joint or consolidated entity tax returns, or other documents demonstrating the ownership relation among or between the members of the group, or other evidence which indicates that the members of the group actually practice together for the purpose of health care delivery.

1. This proof of group status shall be submitted to the board:

a. with the group's original application;

b. within 30 days of any change in the group's status, organization, or membership; and



c. within 10 calendar days of receipt of a written demand therefor from the board.

2. It shall be insufficient for qualification under this Rule if a group is organized solely or primarily for the purpose of qualifying for enrollment with the fund.

C.1. - 2. ...

3. In addition to depositing the money or original instrument evidencing the approved security with the board, a self-insured health care provider shall be required to execute a Pledge Agreement prescribed and supplied by the executive director and to provide evidence that written notice, stating that the approved security will be pledged to the board pursuant to the terms of the Pledge Agreement, has been given to the issuing body.

D. - F.1. ...

a. the self-insured health care provider shall, within 90 days of notice of a claim and no less than every 90 days thereafter, submit a proposed reserve amount to the executive director, along with appropriate supporting documentation. Unless rejected by the executive director within 30 days of receipt, the reserve amount submitted shall be deemed approved. If a reserve amount is rejected timely, the self-insured health care provider may, within 15 days, submit a new reserve amount or appeal the rejection of the executive director. If appealed timely, the matter shall be placed on the agenda of the next meeting of the board, at which time the board may accept the proposed reserve, establish a new amount, or defer action for further information. The decision of the board shall be final;

1.b. - 2. ...

G Repealed.

H. ...

I.1. A self-insured health care provider who has evidenced financial responsibility pursuant to §507 may withdraw the deposit prescribed by §507 upon authorization of the executive director. The security furnished as proof of financial responsibility, or a substitution which has been approved by the board, shall remain on deposit and pledged to the board during the term of the health care provider's enrollment as a self-insured health care provider with the fund and for the longer of a three-year period following termination of such enrollment or as long as any medical malpractice claim is pending, whether with the board or in a court of competent jurisdiction. After this time period, authorization may be given when the health care provider files with the executive director, not less than 30 days prior to the date such withdrawal is to be effected, a certificate, signed and verified under oath by the health care provider, certifying:

a. the date the health care provider terminated enrollment with the fund as a self-insured health care provider;

b. that there are no medical malpractice claims pending with the board or in a court of competent jurisdiction;

c. that there are no unpaid final judgments or settlements against or made by the health care provider in connection with or arising out of a malpractice claim; and

d. that there are no unasserted medical malpractice claims which are probable of assertion against the health care provider.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:171 (February 1992), amended LR 18:737 (July 1992), LR 23:68 (January 1997), LR 29:344 (March 2003).

### **§509. Financial Responsibility: Self-insurance Trusts**

A. - B.2. ...

3. In addition to depositing the money or original instrument evidencing the approved security with the board, a self-insured trust shall be required to execute a Pledge Agreement prescribed and supplied by the executive director and to provide evidence that written notice, stating that the approved security will be pledged to the board pursuant to the terms of the Pledge Agreement, has been given to the issuing body.

C. - K. ...

L.1. A self-insurance trust which has evidenced financial responsibility pursuant to §509 may withdraw the deposit prescribed by §509 upon authorization of the executive director. The security furnished as proof of financial responsibility, or a substitution which has been approved by the board, shall remain on deposit and pledged to the board during the term of the trust's members' enrollments as self-insured health care providers with the fund and for the longer of a three-year period following termination of such enrollment or as long as any medical malpractice claim is pending against the trust or any of its members, whether with the board or in a court of competent jurisdiction. After this time period, authorization may be given when the trust files with the executive director, not less than 30 days prior to the date such withdrawal is to be effected, a certificate, signed and verified under oath by the trustee of the trust, certifying:

a. the date that the last remaining member(s) of the trust terminated enrollment with the fund as self-insured health care provider(s);

b. that there are no medical malpractice claims against the trust or any of its members pending with the board or in a court of competent jurisdiction;

c. that there are no unpaid final judgments or settlements against or made by the trust or any of its members in connection with or arising out of a malpractice claim; and

d. that there are no unasserted medical malpractice claims which are probable of assertion against the trust or any of its members.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:172 (February 1992), amended LR 18:737 (July 1992), LR 23:69 (January 1997), LR 29:345 (March 2003).

### **§511. Coverage: Partnerships and Professional Corporations**

A. When, and during the period that, each shareholder, partner, member, agent, officer, or employee of a corporation, partnership, limited liability partnership, or limited liability company, who is eligible for qualification as a health care provider under the act, and who is providing health care on behalf of such corporation, partnership, or limited liability company, is enrolled with the fund as a

health care provider, having paid the applicable surcharges due the fund for enrollment of such individual, such corporation, partnership, limited liability partnership, or limited liability company shall, without the payment of an additional surcharge, be deemed concurrently qualified and enrolled as a health care provider with the fund.

B. The corporation, partnership, limited liability partnership, or limited liability company shall furnish to the board concurrently with its enrollment and renewal applications the name(s) of each shareholder, partner, member, agent, officer, or employee who is eligible for qualification and enrollment with the fund as a health care provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:173 (February 1992), amended LR 29:345 (March 2003).

#### **§515. Certification of Enrollment**

A. ...

B. Duplicate or additional certificates of enrollment shall be made available by the executive director to and upon the request of an enrolled health care provider or his or its attorney, or professional liability insurance underwriter when such certification is required to evidence enrollment or qualification with the fund in connection with an actual or proposed malpractice claim against the health care provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:173 (February 1992), amended LR 23:69 (January 1997), LR 29:346 (March 2003).

#### **§517. Expiration, Renewal of Enrollment**

A. Enrollment with the fund expires:

1. as to a health care provider evidencing financial responsibility by certification of insurance pursuant to §505 of these Rules, on and as of:

a. the effective date and time of termination of the policy period of the health care provider's professional liability insurance coverage; or

b. the last day of the applicable period for which the prior annual surcharge applied in the event that the annual surcharge for renewal coverage is not paid by the health care provider to the insurer on or before 30 days following the expiration of the enrollment period.

2. ...

B. Enrollment with the fund must be annually renewed by each enrolled health care provider on or before termination of the enrollment period by submitting to the executive director an application for renewal, upon forms supplied by the executive director, and payment of the applicable surcharge in accordance with the Rules hereof providing for the fund's billing and collection of surcharges from insured and self-insured health care providers. Each insured health care provider shall cause the insurer to submit a certificate of insurance to the executive director along with the application for renewal. Each self-insured health care provider and each health care provider covered by a self-insurance trust shall submit, along with the application for renewal, original documents which indicate that the health care provider's deposit with the board is current and/or not in default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:174 (February 1992), amended LR 29:346 (March 2003).

#### **§519. Cancellation, Termination of Enrollment**

**Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:174 (February 1992), repealed LR 29:346 (March 2003).

#### **Chapter 7. Surcharges**

##### **§701. PCF Consulting Actuary**

A. - B.1. ...

2. advising the executive director with respect to the establishment, maintenance, and adjustment of reserves on individual claims against the fund and the establishment, maintenance, and adjustment of reserves for incurred but not reported claims;

3. - 6. ...

7. generally advising and consulting with the executive director on all actuarial questions affecting the administration, operation, and defense of the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:174 (February 1992), amended LR 29:346 (March 2003).

##### **§705. Risk Rating**

A. Surcharge rates collected by the fund shall be based on and classified according to the classes and categories of health care liability risks underwritten by the fund with respect to each class of health care practitioners and institutions eligible for enrollment with the fund. With regard to hospitals, surcharge rates collected by the fund shall be based on the annual average number of occupied beds. Risk classifications and ratings adopted by the fund shall be based on actuarial analysis of the claims experience of health care provider groups enrolled with the fund and equivalent data and practices of commercial insurance underwriters and self-insurance funds insuring such groups. Risk rating classifications for health care providers eligible for enrollment with the fund shall be based on Louisiana claims experience data, including the PCF's own claims experience, unless the PCF's actuary affirmatively demonstrates that, as respects any class of provider, reasonably obtainable, competent, and credible Louisiana claims experience data provides an insufficient basis for such classifications under generally accepted insurance actuarial standards, in which case regional or national claims experience data and statistics relative to such classes of health care provider may be utilized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:175 (February 1992), amended LR 29:346 (March 2003).

##### **§711. Payment of Surcharges: Insurers**

A. Applicable surcharges for enrollment and qualification with the fund shall be collected on behalf of the fund by commercial professional health care liability insurance companies and approved self-insurance trust funds

from insured health care providers electing to enroll and qualify with the fund. Such surcharges shall be collected by such insurers and funds at the same time and on the same basis as such insurers' and fund's collection of premiums or contributions from such insureds. Surcharges collected by such insurers and funds on behalf of the fund shall be due and payable and remitted to the fund by such insurers and funds within 45 days from the date on which such surcharges are collected from any insured health care provider.

B. Annual surcharges for renewal coverage due the fund by insured health care providers whose surcharges are collected by insurers and funds for enrollment and qualification with the fund shall be due and payable to the collecting insurers and funds on or before 30 days following the expiration of the prior enrollment period. Remittance of surcharges to the fund by the insurers and funds shall be made in such form and accompanied by records in such forms or on such forms as may be prescribed by the executive director so as to provide for proper accounting of remitted surcharges and the identity and class of health care providers on whose behalf such surcharges are remitted. Such insurers and funds remitting surcharges to the fund shall certify to the fund, at the time of remitting such surcharge to the fund, the date that the surcharges were collected by them from the health care providers. The payment of surcharges by an approved self-insurance trust that does not collect premiums or contributions from insureds will be governed by §713 hereof.

C. Failure of the commercial professional health care liability insurers, commercial insurance underwriters, and approved self-insurance trust funds to remit payment within 45 days of collecting such annual surcharge shall subject the commercial professional liability insurers, commercial insurance underwriters, and approved self-insurance trust funds to a penalty of 12 percent of the annual surcharge and all reasonable attorney's fees. Upon the failure of the commercial professional health care liability insurers, commercial insurance underwriters and approved self-insurance trust funds to remit as provided in §711, the board may institute legal proceedings to collect the surcharge, together with penalties, legal interest, and attorney's fees.

D. If the instrument used to pay the surcharge is returned to the fund by the payor institution and/or payment hereon is denied for any reason, the health care provider shall be notified thereof by the fund. If the surcharge is not paid in full by certified check, cashier's check, money order, or cash equivalent funds received by the fund within 10 calendar days of the provider's receipt of said notice, then the provider's coverage with the fund shall be terminated as of the end of the previous enrollment period.

E. It is the purpose of §711 that insurers and approved self-insurance trust funds remit surcharges collected from their insured providers to the fund timely. The timeliness of surcharge remittances to the fund by insurers and approved self-insurance trust funds shall not affect the effective date of fund coverage. However, the failure of insured health care providers to timely remit applicable surcharges to insurers and approved self-insurance trust funds for renewal may result in lapses of coverage with the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR

18:176 (February 1992), amended LR 20:432 (April 1994), LR 23:69 (January 1997), LR 29:346 (March 2003).

#### **§715. Amount of Surcharges; Form of Coverage; Conversions**

A. A health care provider qualified for enrollment by evidence of liability insurance pursuant to §505, or by evidence of participation in an approved self-insurance trust pursuant to §509, shall pay the fund surcharge amount in the most recently approved rate filing which is applicable to his provider type, years enrolled in the fund, and which most closely corresponds to the class and form of coverage of said primary liability insurance or self-insurance trust. The form of coverage provided by the fund shall be identical to that provided by the qualifying policy of insurance or self-insurance except where the policy conflicts with applicable law or regulation.

B. ...

C.1. When a health care provider who had previously purchased claims-made coverage from the fund elects to purchase occurrence coverage from or discontinue enrollment in the fund, he shall not have coverage afforded by the fund for any claims arising from acts or omissions occurring during the fund's claims-made coverage but asserted after the termination of the claims-made coverage unless he evidences financial responsibility for those claims either by purchasing an extended reporting endorsement or posting a deposit with the board pursuant to §507 and pays, on or before 30 days following the termination of the claims-made coverage, the surcharge applicable to fund tail coverage for the corresponding claims-made period(s).

2. When a health care provider who had previously purchased claims-made coverage from the fund elects to purchase self-insured coverage from the fund, he shall not have coverage afforded for any claims arising from acts or omissions occurring during the fund's claims-made coverage but asserted after the termination of the claims-made coverage, unless he evidences financial responsibility for those claims either by purchasing an extended reporting endorsement or posting a second deposit with the board pursuant to §507 and pays, on or before 30 days following the termination of the claims-made coverage, the surcharge applicable to fund tail coverage for the corresponding claims-made period(s).

3. In special circumstances, the board may, at its discretion, waive the payment of an additional surcharge and allow tail coverage to a provider without the payment of the applicable-surcharge. Each such case requires an individual written request for relief to the board, and will be decided on individual circumstances. The board's criteria for such decisions shall include, but not be limited to:

C.3.a. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 23:69 (January 1997), amended LR 29:347 (March 2003).

#### **Chapter 9. Scope of Coverage**

##### **§901. Effective Date**

A. A health care provider who qualifies for enrollment with the fund by demonstrating financial responsibility through professional liability insurance pursuant to §505 of these Rules, shall be deemed to become and be enrolled with the fund effective as of the date on which the surcharge

payable by or on behalf of such health care provider is timely collected in accordance with §711 hereof and the applicable policies and procedures of the insurer for premium payments. If such surcharge is not timely collected, the effective date of enrollment with the fund shall be the date on which such surcharge is paid to the fund is collected or accepted by the insurer.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299-44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:176 (February 1992), amended LR 23:70 (January 1997), LR 29:347 (March 2003).

## **Chapter 11. Reporting**

### **§1101. Reporting of Claims, Reserves, Proposed Settlement**

A. - C. ...

D. Within 20 days of the receipt of a malpractice claim against an enrolled health care provider in the form of a lawsuit, the health care provider, or the health care provider's liability insurer, shall furnish a copy of the lawsuit to the PCF. The health care provider, or the health care provider's liability insurer, shall also furnish to the PCF within 20 days of receipt, a copy of all amending pleadings related to the lawsuit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:177 (February 1992), amended LR 29:348 (March 2003).

## **Chapter 14. Medical Review Panels**

### **§1401. Procedure**

A. Except as otherwise provided by the act, all malpractice claims against health care providers shall be reviewed by a medical review panel. The composition and operation of a medical review panel shall be in accordance with R.S. 40:1299.47.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 29:348 (March 2003).

### **§1403. Malpractice Complaint**

A. A "request for review of a malpractice claim" or "malpractice complaint" shall contain, at a minimum:

1. a request for the formation of a medical review panel;
2. name of the patient;
3. name(s) of the claimant(s);
4. name(s) of defendant health care providers;
5. date(s) of alleged malpractice;
6. brief description of alleged malpractice; and
7. brief description of alleged injuries.

B. The request for review of a malpractice claim shall be deemed filed on the date of receipt of the complaint stamped and certified by the board or on the date of mailing of the complaint if mailed to the board by certified or registered mail.

C. Within 15 days of receiving a malpractice complaint, the board shall:

1. confirm to the claimant that the malpractice complaint has been officially received and whether or not

the named defendant(s) are qualified for the malpractice claim; and

2. notify all named defendant(s) that a malpractice complaint requesting the formation of a medical review panel has been filed against them and forward a copy of the malpractice complaint to each named defendant at his last and usual place of residence or his office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 29:348 (March 2003).

### **§1405. Attorney Chairman**

A. An attorney chairman of a medical review panel is to be chosen by the parties according to R.S. 40:1299.47.C. An attorney chairman must be secured within two years from the date the request for review of the claim was filed. If, after two years, an attorney chairman has not been secured, the board shall send notice by certified mail to the claimant or the claimant's attorney stating that the claim will be dismissed after 90 days if no attorney chairman is appointed. If no attorney chairman is appointed within 90 days of the certified notice, the board shall dismiss the claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 29:348 (March 2003).

## **Chapter 15. Defense of the Fund**

### **§1501. Claims Defense**

A. Through its executive director, the board shall be responsible for the administration and processing of claims against and legal defense of claims against the fund. The executive director shall be responsible, and accountable to the board, for coordination and management of defense of the fund against claims to the extent of the responsibilities imposed on the board by the act. Without limitation on the scope of such responsibility, the executive director shall be specifically responsible for:

1. - 2. ...
3. retaining, subject to qualifications and standards prescribed by the board, and supervising the services of attorneys at law to defend the fund against claims;
4. - 7. ...
8. the discharge and performance of such other duties, responsibilities, functions, and activities as are delegated by the board;
9. all authority for the defense of the fund vested in the board by the Act is hereby delegated to the executive director. In the exercise of such authority, the executive director shall be accountable to, and subject to the superseding authority of, the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:179 (February 1992), amended LR 29:348 (March 2003).

### **§1503. Claims Accounting**

A. All expenses incurred in the legal defense, disposition, payment on individual claims, judgments, or settlements shall be accounted for and allocated among such respective claims.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:179 (February 1992), amended LR 29:348 (March 2003).

**§1505. Claim Reserves**

A. Within 10 days of receipt of notice of a claim against or potentially involving liability of the fund, the fund shall establish a reserve against such claim representing the total amount of compensation and compensation adjustment expenses which the fund is anticipated to be liable for and incur in respect of and allocable to such claim. Reserves respecting individual claims against the fund shall be established in consultation, as appropriate, with legal counsel representing the fund with respect to such claim, with legal counsel for the enrolled health care providers against whom the claim is primarily asserted, and with claims personnel managing such claim for the commercial insurers of the enrolled health care providers against whom the claim is asserted. Reserves respecting individual claims against the fund shall be adjusted from time to time as changing circumstances or evaluations may warrant, and all reserves shall be reviewed not less frequently than quarterly for necessary and appropriate adjustments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:180 (February 1992), amended LR 29:349 (March 2003).

**§1507. Settlement of Claims**

A. Claims against the fund may be compromised and settled upon the recommendation of the executive director and the approval of the board. The executive director shall, however, have authority, without the necessity of prior approval by the board, to compromise and settle any individual claim against the fund for an amount not exceeding \$10,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:180 (February 1992), amended LR 29:349 (March 2003).

Lorraine LeBlanc  
Executive Director

0303#025

**RULE**

**Office of the Governor  
Real Estate Commission**

Agency Disclosure  
(LAC 46:LXVII.3703 and 3705)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Real Estate Commission has amended LAC 46:LXVII.Chapter 37, §§3703 and 3705. The amendments provide for an agency disclosure form that may be used in lieu of the agency disclosure pamphlet at the discretion of the licensee. Language regulating the timeframe in which signatures are obtained on the dual agency disclosure form or the agency

disclosure form will be amended to coincide with the governing statute, R.S. 9:3897.C.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate  
Subpart 1. Real Estate**

**Chapter 37. Agency Disclosure**

**§3703. Agency Disclosure Informational Pamphlet**

A. Licensees shall provide the agency disclosure informational pamphlet or the agency disclosure form to all parties to a real estate transaction involving the sale or lease of real property.

B. The agency disclosure informational pamphlet and the agency disclosure form may be obtained from the commission in a form suitable for use by licensees in reproducing them locally. Licensees are responsible for ensuring that the pamphlets and forms are the most current version prescribed by the commission and that reproductions of the pamphlet and form contain the identical language prescribed by the commission.

C. Licensees will provide the agency disclosure informational pamphlet or the agency disclosure form to prospective sellers/lessors and buyers/lessees at the time of the first face-to-face contact with the sellers/lessors or buyers/lessees when performing any real estate related activity involving the sale or lease of real property, other than a ministerial act as defined in R.S. 9:3891(12).

D. Licensees providing agency disclosure informational pamphlets or agency disclosure forms to prospective sellers/lessors and buyers/lessees shall insure that the recipient of the pamphlet or form signs and dates the pamphlet or form. The licensee providing the pamphlet or form shall sign as a witness to the signature of the recipient, and the licensee will retain the signed pamphlet or form for a period of five years.

E. In any circumstance in which a seller/lessor or a buyer/lessee refuses to sign the receipt included in the agency disclosure informational pamphlet or the agency disclosure form, the licensee shall prepare written documentation to include the nature of the proposed real estate transaction, the time and date the pamphlet or form was provided to the seller/lessor or buyer/lessee, and the reasons given by the seller/lessor or buyer/lessee for not signing the pamphlet or form. This documentation will be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003).

**§3705. Dual Agency Disclosure**

A. The dual agency disclosure form will be used by licensees acting as a dual agent under R.S. 9:3897.

B. The dual agency disclosure form shall be obtained from the commission in a form suitable for use by licensees in reproducing the form locally. Licensees are responsible for ensuring that the form is the most current version prescribed by the commission and that reproductions of the forms contain the identical language prescribed by the commission.

C. Licensees shall ensure that the dual agency disclosure form is signed by all clients at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003).

Julius C. Willie  
Executive Director

0303#035

**RULE**

**Department of Natural Resources  
Office of Conservation**

Fees (LAC 43:XIX.703)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby amends the established application fees for public hearings.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of ConservationC General Operations  
Subpart 2. Statewide Order No. 29-R**

**Chapter 7. Fees**

**§703. Fee Schedule for Fiscal Year 2002-2003**

A. Fee Schedule

Application Fees	Amount
***	
Application for Public Hearing	\$755
***	

B. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:1528 (July 2000), LR 26:2304 (October 2000), LR 27: 1430 (August 2001), LR 27:1897 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003).

James H. Welsh  
Commissioner of Conservation

0303#009

**RULE**

**Board of Examiners of Bar Pilots  
for the Port of New Orleans**

Bar Pilot Regulations  
(LAC 46:LXXVI.Chapters 11-16)

The Louisiana Legislature formed the Board of Examiners of Bar Pilots for the Port of New Orleans for the purpose of establishing Rules, regulations and requirements for holding

examinations for all applicants who have registered with them for the posts of bar pilots; to establish standards for recommendation by the Board of Examiners of bar pilots for the Port of New Orleans to the Governor of the state of Louisiana for appointment as bar pilots who, pursuant to R.S. 34:941 et seq., have the duty to pilot sea-going vessels into and out of the entrances of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waterways of the Gulf of Mexico; to establish procedures in conformity with the requirements of the Administrative Procedure Act for investigating and conducting hearings relative to incidents and/or complaints of pilot misconduct; to establish certain minimum standards of conduct, including conduct relative to neglect of duty, drunkenness, carelessness, habitual intemperance, substance abuse, incompetency, unreasonable absence from duty, and general bad conduct of bar pilots; to provide a uniform set of Rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of the Associated Branch Pilots for the Port of New Orleans; and to insure compliance by the Board of Examiners with the Public Meetings Law. These Rules and regulations are enacted to accomplish those purposes required by the Legislature and to protect the public by ensuring available, safe and competent pilotage of vessels on the waterways under the jurisdiction of this board of examiners.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXVI. Steamship Pilots**

**Subpart 3. Bar Pilots of the Port of New Orleans**

**Chapter 11. General Provisions**

**§1101. Authority**

A. As mandated by R.S. 34:945.C.1, these Rules and regulations are issued by the Board of Examiners of bar pilots for the Port of New Orleans in accordance with the Administrative Procedure Act under R.S. 49:950, et seq. for the purpose of adopting Rules, regulations and requirements for holding examinations for all applicants who have registered with them for the posts of bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:350 (March 2003).

**§1102. Purpose**

A. The purposes of these Rules and regulations are as follows:

1. to establish standards for recommendation by the Board of Examiners of Bar Pilots for the Port of New Orleans to the Governor of the State of Louisiana for appointment as bar pilots who, pursuant to R.S. 34:941 et seq., have the duty to pilot sea-going vessels into and out of the entrances of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waterways of the Gulf of Mexico.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:350 (March 2003).

### §1103. Definitions

A. The following terms as used in these Rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

*Administrative Procedure Act* The Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

*Application* The written application supplied by the Board of Examiners to an applicant who desires to become a bar pilot for the Port of New Orleans.

*Board of Examiners* or *Board* The Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

*Bar Pilot* or *Pilot* A bar pilot for the Port of New Orleans, as designated in R.S. 34:943.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003).

### §1104. Severability

A. If any provision of these Rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these Rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003).

### §1105. Effective Date

A. These Rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register*. All bar pilots and bar pilot candidates shall be provided with a copy of these Rules and regulations as well as any amendments, after the Rules and regulations are adopted by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003).

### §1106. Qualifications of Pilots

A. No person shall be recommended to the governor for appointment as a Bar Pilot unless the applicant:

1. is a qualified elector of the State of Louisiana;
2. has served at least 12 months next preceding the date of his application in a pilot boat at the mouth of the Mississippi River or other entrances into the Gulf of Mexico or other outside waters from the Port of New Orleans;
3. has successfully passed the examination given by the board of examiners, as required by R.S. 34:948;
4. owns or has made a binding legal agreement to acquired as owner or part owner of at least one decked pilot boat of not less than 50 tons burden, which is used and employed exclusively as a pilot boat, as required by R.S. 34:930;
5. is a high school graduate or, in lieu thereof, holds a third mate's license;
6. has served at least one year at sea on a sea-going vessel of not less than 1600 gross tons in the deck department;

7. has successfully passed a physical examination which in the judgment of the Board of Examiners includes those standards, such as vision, color perception and hearing tests, to perform duties as a bar pilot;

8. is of good moral character; and

9. shall have completed satisfactorily an apprenticeship program which culminates in a cubbing period of not less than 9 months duration handling vessels over the routes of the bar pilots under the supervision of not less than 25 licensed state bar pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003).

### §1107. Minimum Requirements

A. The Board of Examiners shall review, and if found satisfactory, approve the apprenticeship program of the applicant, the minimum requirements of which shall be as follows: the applicant must set forth in detail the names of the vessels handled, dates handled, the direction of travel, size, draft, and type of vessel, and the name of the supervising bar pilot. During the period of apprenticeship the applicant shall handle vessels on not less than 650 occasions, two-thirds of which shall be at night.

B. The board of examiners will review the number and times of vessels handled, the size, draft, and type of vessels and the conditions under which the applicant has performed the apprenticeship in order to determine if the applicant has had sufficient exposure as to enable the board of examiners to make a determination of the applicant's competence and ability to perform the duties of a bar pilot.

C. The Board of Examiners shall prescribe the form of the application and required documentary proof of the applicant's eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003).

### §1108. Bond

A. No person shall assume the position of bar pilot until he shall have first taken the oath prescribed by law and has furnished a bond in favor of the Governor in the amount of \$2,000 conditioned on the faithful performance of his duties imposed upon him as a bar pilot. This bond shall be approved by the Board of Commissioners of the Port of New Orleans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003).

## Chapter 13. Pilots

### Subchapter A. General Provisions

#### §1301. Authority

A. As mandated by R.S. 34:945.c.1, these Rules and regulations are issued in accordance with the Administrative Procedure Act under R.S. 49:950 et seq. for the purpose of establishing minimum standards of conduct for bar pilots and for the proper and safe pilotage of sea-going vessels into and out of the entrance of the Mississippi River and into and out of the entrances of all other waterways connecting the

Port of New Orleans with outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur Sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:351 (March 2003).

### §1302. Purpose

A. The purposes of these Rules and regulations are as follows:

1. to establish certain minimum standards of conduct, including conduct relative to neglect of duty, drunkenness, carelessness, habitual intemperance, substance abuse, incompetency, unreasonable absence from duty, and general bad conduct of bar pilots;

2. to provide a uniform set of Rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways referred to in §1101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:352 (March 2003).

### §1303. Definitions

A. The following terms as used in these Rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

*Administrative Procedure Act* the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

*Bar Pilot* or *Pilot* a bar pilot for the Port of New Orleans, as designated in R.S. 34:943.

*Board of Examiners* or *Board* the Board of Examiners of Bar Pilots for the Port of New Orleans, established in R.S. 34:942.

*Services of a Bar Pilot* any advice or assistance with respect to pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

*Waterways* the entrance into and out of the Mississippi River and into and out of the entrances of all other waterways connecting the Port of New Orleans with the outside waters of the Gulf of Mexico, including the entrance of the New Orleans Tidewater Channel at the western shore of the Chandeleur sound off Point Chicot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:352 (March 2003).

### §1304. Investigations and Enforcement

A. All complaints reported to the board shall be considered for investigation. A complaint under the provisions of §1304.A through §1304.F is defined as:

1. any written complaint involving a bar pilot commissioned for the Port of New Orleans;

2. any reported incident involving a bar pilot commissioned for the Port of New Orleans while piloting a vessel; or

3. any other event involving a bar pilot commissioned for the Port of New Orleans that, in the discretion of any member of the board, justifies further investigation.

B. The board may appoint an investigating officer to investigate the complaint and report to the board.

C. If the board, or its designated investigating officer, is of the opinion that the complaint, if true, is sufficient to justify a further investigation, it shall appoint an investigating officer, or authorize its designated investigating officer to conduct a full investigation of the complaint.

D. Once authorized under §1304.C, the investigating officer, who may be an active or retired member of the Associated Branch Pilots of the Port of New Orleans, Louisiana, and who may be a member of the Board, shall make a full and complete investigation of the complaint. He shall be assisted by an attorney, named as independent prosecutor by the board. In the event that the Investigating Officer, as contemplated by either §1304.B or §1304.C, is an active member of the board, he shall be recused from any participation in the decision of the case.

E. If the investigating officer is of the opinion that the conduct in question is not sufficient to justify further proceedings, he shall make a reasoned report to the board, which may accept or reject his recommendation.

F. If the investigating officer is of the opinion that the conduct complained of is sufficient to justify further proceedings and the board has accepted his recommendations, or if the board has rejected his recommendation to dismiss the complaint, he shall give notice to the respondent, by registered mail, of the facts or conduct on which the complaint is based, and offer the respondent an opportunity to show compliance with the laws or regulations allegedly violated. If, in the opinion of the investigating officer, the respondent is able to demonstrate such compliance, then the investigating officer shall make a report to the board, recommending to the board that the complaint be dismissed. The board may accept or reject the recommendation of the investigating officer.

G. If the respondent is unable to demonstrate such compliance, or if the board rejects the recommendation of the investigating officer to dismiss the complaint, the investigating officer shall initiate proceedings by filing a written administrative complaint with the board, which shall be signed by the investigating officer.

H. The administrative complaint shall name the accused bar pilot as respondent in the proceedings. It shall also set forth, in separately numbered paragraphs, the following:

1. a concise statement of material facts and matters alleged and to be proven by the investigating officer, including the facts giving rise to the board's jurisdiction over the respondent;

2. the facts constituting legal cause under law for administrative action against the respondent;

3. the statutory or regulatory provisions alleged to have been violated by respondent.

I. The administrative complaint shall conclude with a request for the administrative sanction sought by the investigating officer, and shall state the name, address, and telephone number of administrative complaint counsel engaged by the board to present the case at the evidentiary hearing before the board.



J. The board may either accept or reject the administrative complaint.

K. If it rejects the administrative complaint, the case may be either dismissed or referred back to the investigating officer for further investigation.

L. If the board accepts the administrative complaint, the board shall docket the administrative complaint and schedule the administrative complaint for hearing before the board not less than 45 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the investigating officer or respondent pursuant to a showing of proper grounds. In the event the respondent's commission as a bar pilot for the port of New Orleans has been suspended by the board pending hearing, the evidentiary hearing on the administrative complaint shall be noticed and scheduled not more than 45 days after the filing of the administrative complaint.

M. A written notice of the administrative complaint and the time, date and place of the scheduled hearing thereon shall be served upon the respondent by registered, return receipt requested mail, as well as by regular first class mail, at the most current address for the respondent reflected in the official records of the board, or by personal delivery of the administrative complaint to the respondent. The notice shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, and shall be accompanied by a certified copy of the administrative complaint.

N. The case shall be prosecuted by the independent prosecutor, also referred to administrative complaint counsel, who shall handle the case to its conclusion. He shall be entirely independent of the authority of the board in going forward with the matter, and may conduct such further investigation, and prepare and try the case in such manner as he may deem appropriate.

O. Within 15 days of service of the administrative complaint, or such longer time as the board, on motion of the respondent, may permit, the respondent may answer the administrative complaint, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent does not file a response to the administrative complaint, all matters asserted therein shall be deemed denied.

P. Any respondent may be represented in an adjudication proceeding before the board by an attorney at law duly admitted to practice in the state of Louisiana. Upon receipt of service of an administrative complaint pursuant to these Rules, or thereafter, a respondent who is represented by legal counsel with respect to the proceeding shall, personally or through such counsel, give written notice to the board of the name, address, and telephone number of such counsel. Following receipt of proper notice of such representation, all further notices, administrative complaints, subpoenas or other process related to the proceeding shall be served on respondent through his or her designated counsel of record.

Q. All pleadings, motions or other papers permitted or required to be filed with the board in connection with a

pending adjudication proceeding shall be filed by personal delivery at or by mail to the office of the board and shall by the same method of delivery be concurrently served upon administrative complaint counsel designated by the administrative complaint, if filed by or on behalf of the respondent, or upon respondent, through counsel of record, if any, if filed by administrative complaint counsel.

1. All such pleadings, motions or other papers shall be submitted on plain white letter-size (8 1/2 x 11") bond, with margins of at least one inch on all sides, and double spaced except as to quotations and other matters customarily single spaced, shall bear the caption and docket number of the case as it appears on the administrative complaint, and shall include the certificate of the attorney or person making the filing that service of a copy of the same has been effected in the manner prescribed by Subsection A of this Section.

2. The Board may refuse to accept for filing any pleading, motion or other paper not conforming to the requirements of this section.

R. Motions for continuance of hearing, for dismissal of the proceeding and all other prehearing motions shall be filed not later than 30 days following service of the Administrative Complaint on the respondent or 15 days prior to the hearing, whichever is earlier. Each prehearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion. Within 10 days of the filing of any such motion and memorandum or such shorter time as the board may order, the investigating officer, through administrative complaint counsel, may file a memorandum in opposition to or otherwise setting forth the investigating officer's position with respect to the motion.

S.1. A motion for continuance of hearing shall be filed within the delay prescribed by §1304.R of these Rules, provided that the board may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of prehearing motions.

2. A scheduled hearing may be continued by the board only upon a showing by respondent or administrative complaint counsel that there are substantial legitimate grounds that the hearing should be continued, balancing the right of the respondent to a reasonable opportunity to prepare and present a defense to the complaint and the board's responsibility to protect the public health, welfare and safety. Except in extraordinary circumstances evidenced by verified motion or accompanying affidavit, the board will not ordinarily grant a motion to continue a hearing that has been previously continued upon motion of the same party.

3. If an initial motion for continuance is not opposed, it may be granted by the presiding officer.

T.1. Any prehearing motion, other than an unopposed initial motion for continuance of hearing which may be granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board designated with respect to the proceeding for ruling. The presiding officer, who shall be a member of the board designated as presiding officer by the board in each matter before the board, in his discretion, may refer any prehearing motion to the board for disposition, and

any party aggrieved by the decision of a presiding officer on a prehearing motion may request that the motion be reconsidered by the entire panel.

2. Prehearing motions shall ordinarily be Ruled upon by the presiding officer or the board, as the case may be, on the papers filed, without hearing. On the written request of respondent or of administrative complaint counsel, however, and on demonstration that there are good grounds therefor, the presiding officer may grant opportunity for hearing by oral argument, on any prehearing motion.

U.1. Upon request of the respondent or administrative complaint counsel and compliance with the requirements of this Section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

2. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

V.1. In any case of adjudication noticed and docketed for hearing, counsel for respondent and administrative complaint counsel may agree, or the presiding officer may require, that a prehearing conference be held among such counsel, or together with the board's independent counsel appointed pursuant to §1304.W hereof, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

2. Following such prehearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a prehearing stipulation which should include:

- a. a brief statement by administrative complaint counsel as to what such counsel expects the evidence to be presented against respondent to show;
- b. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;
- c. a list of the witnesses to be called by administrative complaint counsel and by respondent, together with a brief general statement of the nature of the testimony each such witness is expected to give;
- d. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents or issues; and
- e. an estimate of the time required for the hearing.

W.1. Unless otherwise requested by the respondent, adjudication hearings, being the hearing conducted on the merits of the administrative complaint, shall be conducted in closed session.

2. At an adjudication hearing, opportunity shall be afforded to administrative complaint counsel and respondent

to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the administrative complaint.

3. Unless stipulation is made between the parties and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings.

4. During evidentiary hearing, the presiding officer shall Rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire panel in executive session. At any such hearing, the board may be assisted by legal counsel retained by the board for such purpose, who is independent of administrative complaint counsel and who has not participated in the investigation or prosecution of the case. If the board or panel is attended by such counsel, the presiding officer may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing.

5. The record in a case of adjudication shall include:
- a. the administrative complaint and notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;
  - b. evidence received or considered at the hearing;
  - c. a statement of matters officially noticed except matter so obvious that statement of them would serve no useful purpose;
  - d. offers of proof, objections, and rulings thereon;
  - e. proposed findings and exceptions, if any;
  - f. the decision, opinion, report or other disposition of the case made by the board.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

X.1. In an adjudication hearing, the board may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the Rules of privilege recognized by law. The board or panel may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the board which administrative complaint counsel desires the board to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference, the materials so incorporated shall be available for examination by the respondent before being received in evidence.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. Parties shall be notified either before or during the hearing of the material noticed or sought by a

party to be noticed, and they shall be afforded an opportunity to contest the material so noticed. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

5. Except as otherwise governed by the provision of these Rules, adjudication hearings before the board shall be governed by the Louisiana Code of Evidence, insofar as the same may be applied.

Y. The board may make informal disposition, by default, consent order, agreement, settlement or otherwise of any adjudication pending before it. A consent order shall be considered by the board only upon the recommendation of the investigating officer.

Z.1. The final decision of the board in an adjudication proceeding shall, if adverse to the respondent, and otherwise may be, in writing, shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a certified copy thereof shall promptly be served upon respondent's counsel of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of administrative complaints.

AA.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within ten days from service of the decision on respondent or on its own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed by §1304.Q and shall set forth the grounds upon which such motion is based, as provided by Subsection B of this Section.

2. The board may grant rehearing, reopening, or reconsideration if it is shown that:

- a. the decision is clearly contrary to the law and the evidence;
- b. the respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;
- c. other issues not previously considered ought to be examined in order to properly dispose of the matter; or
- d. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

BB. Pursuant to R.S. 34:945(C)(3), the board of Examiners shall have the authority to impose a fine of not more than \$500 on any bar pilot, to reprimand or remove from a vessel any bar pilot, or to recommend to the Governor that the commission of any bar pilot be suspended or revoked, if after a hearing conducted in accordance with these Rules and regulations and the administrative procedure

act a bar pilot is found in violation of any Rule or regulation adopted by the board of examiners.

CC. The authority established in these Rules is in addition to and in no way limits the authority of the board to seek to remove or to remove a pilot from a vessel pursuant to the provisions of R.S. 34: 947 and R.S. 49:961(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:352 (March 2003).

### §1305. Severability

A. If any provision of these Rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these Rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:355 (March 2003).

### §1306. Effective Date

A. These Rules and regulations shall be in full force and effective 90 days after final publication in the *Louisiana Register*. All bar pilots and bar pilot candidates shall be provided with a copy of these Rules and regulations, as well as any amendments, after the Rules and regulations are adopted by the board of examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:355 (March 2003).

## Chapter 14. Standards of Conduct: Proper and Safe Pilotage

### §1401. Adoption of Inland Navigational Rules

A. For those waters on which the Inland Rules apply within the jurisdiction of the bar pilots, the board of Examiners hereby adopts, by reference and in its entirety, the Inland Navigational Rules at 33 U.S.C. Section 2001, et seq. The board of examiners also adopts the navigation safety standards set forth in Title 33 CFR part 164 (p). All bar pilots and bar pilot applicants shall be subject to these Inland Navigational Rules and safety standards as adopted herein by reference.

#### Title 33 CFR Part 164 (P)

- (p) The person directing the movement of the vessel sets the vessel's speed with consideration for:
- (1) the prevailing visibility and weather conditions;
  - (2) the proximity of the vessel to fixed shore and marine structures;
  - (3) the tendency of the vessel underway to squat and suffer impairment of maneuverability when there is small underkeel clearance;
  - (4) the comparative proportions of the vessel and the channel;
  - (5) the density of marine traffic;
  - (6) the damage that might be caused by the vessel's wake;
  - (7) the strength and direction of the current; and
  - (8) any local vessel speed limit.

NOTE: These Rules CFR 110.195 and 161.402 have not been adopted but should be reviewed by all pilots and applicants.

Title 33 CFR 110.195

(a) The Anchorage Grounds. Unless otherwise specified, all anchorage widths are measured from the average low water plane (ALWP).

(1) Pilottown Anchorage. An area 5.2 miles in length along the right descending bank of the river from mile 1.5 to mile 6.7 above Head of Passes, extending in width to 1600 feet from the left descending bank of the river.

Title 33 CFR 161.402

(c) Navigation of South and Southwest Passes.

(1) No vessel, except small craft and towboats and tugs without tows, shall enter either South Pass or Southwest Pass from the Gulf until after any descending vessel which has approached within two and one-half (2 1/2) miles of the outer end of the jettles and visible to the ascending vessel shall have passed to sea.

(2) No vessel having a speed of less than 10 mph shall enter South Pass from the Gulf when the state of the Mississippi River exceeds 15 feet on the Carrollton Gage at New Orleans. This paragraph does not apply when Southwest Pass is closed to navigation.

(3) No vessel, except small craft and towboats and tugs without tows, ascending South Pass shall pass Franks Crossing Light until after a descending vessel shall have passed Depot Point Light.

(4) No vessel, except small craft and towboats and tugs without tows, shall enter the channel at the head of South Pass until after an ascending vessel which has reached Franks Crossing Light shall have passed through into the river.

(5) When navigating South Pass during periods of darkness no tow shall consist of more than one towed vessel other than small craft, and during daylight hours, no tow shall consist of more than two towed vessels other than small craft. Tows may be in any formation. When towing on a hawser, the hawser shall be as short as practicable to provide full control at all times.

(6) When towing in Southwest Pass during periods of darkness no tow shall consist of more than two towed vessels other than small craft, and during daylight hours, no tow shall consist of more than three towed vessels other than small craft.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:355 (March 2003).

**§1402. Ships Required to Take Pilots**

A. All ships and vessels inward or outward bound throughout the entrances of the Mississippi River or other inland waterway connecting the Port of New Orleans with the Gulf of Mexico, or other outside waters, except those of 100 tons or less lawfully engaged in the coasting trade of the United States, shall take a bar pilot when one is offered; and any ship or vessel refusing or failing to take a pilot shall be liable to the pilot thus offering for pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003).

**§1403. Pilots' Duty of Remain on Board Ship until Crossing Bar**

A. When boarding an outward bound ship or vessel at the boarding stations bar pilots shall remain on board the ship until she crosses the bar, unless permission is given by the master for the pilot to absent himself from the ship or vessel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003).

**§1404. Acting as Pilot without License; Penalty**

A. No person who is not commissioned a bar pilot shall board any ship or vessel required to take a bar pilot, for the purpose of piloting, or to pilot or attempt to pilot the same; and no person or pilot shall board any such ship or vessel for the purpose of piloting, except from the pilot boats on the bar pilot stations. Whoever violates the provisions of this Section shall be fined not less than \$1,500 nor more than \$5,000, or may be imprisoned for not more than six months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003).

**§1405. Pilot's Duty to Exhibit License**

A. Whoever offers to pilot a ship or other vessel shall, if required, exhibit to the commander thereof this identification card as a bar pilot, attested to by the chairman of the board of examiners; and if he refuses or neglects to do so, he shall not be entitled to any remuneration for any service he may render as pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003).

**§1406. Employing Pilot without Licenses; Liability of Vessel, Master or Owner**

A. When a vessel, inward or outward bound to or from the Port of New Orleans employs as a pilot a person who is not a state commissioned bar pilot, when a bar pilot offers his services, the vessel, her captain and owners, shall be liable for a civil penalty of and shall forfeit to the state of Louisiana the sum of \$15,000 with privilege on the vessel, to be recovered before any court of competent jurisdiction. An action for forfeiture under this Section may be brought by the attorney general of Louisiana or by the Associated Branch Pilots of the Port of New Orleans. If the Associated Branch Pilots of the Port of New Orleans obtains a judgment hereunder, the court shall include in its judgment a reasonable attorney's fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003).

**§1407. Employing Pilot without a State Commission; Penalties**

A. No master, owner, or agent of a vessel required under R.S. 34:953 to take a state commissioned bar pilot shall, when a state commissioned bar pilot offers his services, employ as a pilot a person who is not a state commissioned bar pilot.

B. Whoever violated this Section shall be subject to a fine of not less than \$1,500 nor more than \$5,000, or imprisoned for not more than 6 months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:356 (March 2003).

**§1408. Offering of Services**

A. As used in this Subpart, reference to the offering of a bar pilot or the offering of services by a bar pilot shall mean any offering of any advice or assistance with respect to pilotage by the commissioned bar pilot or by his authorized representative, including but not limited to advice concerning weather, channel conditions, and other navigational conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

**§1409. Prohibition of Interest of Members of Board of Commissioners of Port of New Orleans, in Pilot Boat or Pilotage**

A. The members of the Board of Commissioners of the Port of New Orleans shall not be interested, directly or indirectly, in any bar pilot boat or pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

**§1410. Report by Pilot**

A. In any case where a vessel being piloted by a bar pilot shall go aground, or shall collide with any object, or shall meet with any casualty, which causes injury to persons or damage to property, the pilot shall, as soon as possible report such incident to the board.

B. The board, with or without complaint made against said pilot, shall investigate the incident.

C. The pilot shall make a complete report to the board within 10 days after the incident. This report may either be an oral or a written report as the board deems necessary.

D. These Rules shall apply to any bar pilot engaged in piloting within the operating territory as defined by R.S. 34:941 et seq., whether the vessel be subject to compulsory pilotage or elective pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

**§1411. Pilots Duty to Report**

A. Pilots, when notified, shall report in person to the board at the time and place so designated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

**§1412. Pilots Summoned to Testify**

A. Any bar pilot summoned to testify before the board shall appear in accordance with such summons and shall make answer under oath to any question put to him, touching any matter connected with the pilot's service or of the pilot grounds over which he is commissioned to pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

**Chapter 15. Drug and Alcohol Policy**

**§1501. Application**

A. The board of examiners hereby adopts the following Rules and regulations relating to a drug and alcohol abuse policy applicable to all state licensed bar pilots pursuant to the provisions of R.S. 34:941 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

**§1502. Statement of Findings and Purposes**

A. The Board of Examiners of Bar Pilots for the Port of New Orleans, Louisiana, (hereinafter "board") has always had a strong commitment to the pilot members of the Associated Branch Pilots for the Port of New Orleans to provide a safe work place and to establish programs promoting high standards of bar pilot health. Consistent with the spirit and intent of this commitment, the board has established this policy regarding drug and alcohol abuse. Its goal will continue to be one of establishing and maintaining a work environment that is free from the effects of alcohol and drug abuse.

B. While the board has no intention of intruding into the private lives of bar pilots, the board does expect bar pilots to report for work in a condition to perform their duties. The board recognizes that off-the-job, as well as on-the-job, involvement with alcohol and drugs can have an impact on the work place and on a bar pilot's ability to accomplish our goal of an alcohol and drug-free work environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

**§1503. Bar Pilots' Assistance Program**

A. Establishment. The board has designed a Bar Pilots' Assistance Program (BPAP) to provide help for any bar pilot whose personal alcohol or drug abuse problems may seriously affect his or her ability to function on the job, at home and in society.

B. Eligibility. The BPAP is available to all bar pilots and their spouses because an alcohol or drug abuse problem of a spouse may also affect a bar pilot's work and general well-being.

**C. Procedure**

1. At times, people find the solution to their own problems. When this cannot be accomplished, a BPAP staff person will discuss the bar pilot's problem with him and put him in touch with appropriate professional sources.

2. The bar pilot or spouse will then be advised of available alternatives for treatment, counseling or help, and assisted in arranging an appointment. When an eligible person requests assistance, that person decides whether or not he or she wants to pursue the recommendation.

3. The BPAP will either provide assistance by telephone or will arrange for a confidential consultation in their private offices.

D. Costs. If the counseled person needs to be referred to resources outside the BPAP, then he or she is responsible for all fees.

E. Confidentiality. A bar pilot's right to confidentiality and privacy in the BPAP is recognized. All information regarding referral, evaluation, and treatment will be maintained in a confidential manner and no BPAP matters will be entered in a bar pilot's personal file except as is mandated by law. A request for evaluation, diagnosis, information, or treatment will not affect this board's actions or recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:357 (March 2003).

#### §1504. Definitions

A. As used in this Chapter:

*Alcoholic Beverage* Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol.

*Drug* Call controlled dangerous substances as defined in R.S. 40:961.7. Some of the drugs which are illegal under Federal, State, or local laws include, among others, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited physician.

*Prescription Medication* Any medication distributed by the authorization of a licensed physician as defined in R.S. 40:961.30.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:358 (March 2003).

#### §1505. Prohibitions and Requirements of the Policy

A. A bar pilot who is under the influence of alcohol or drugs, or who possesses or uses alcohol or drugs on the job, has the potential for interfering with his own safety as well as that of the ship he is piloting and other vessels in the area, property, and personnel. Consistent with existing board practices, such conditions shall be proper cause for disciplinary action up to and including loss of state license as a bar pilot.

B.1. Off-the-job drug or alcohol abuse use that could adversely affect a bar pilot's job performance or could jeopardize the safety of others shall be proper cause for administrative or disciplinary action up to and including recommendation for revocation of a bar pilot's license.

2. Bar pilots who are arrested for off-the-job drug or alcohol activity may be considered to be in violation of this policy. In deciding what action to take, the board will take into consideration the nature of the charges, the bar pilot's overall job performance as a pilot, and other factors relative to the impact of the bar pilot's arrest upon the conduct of bar pilotage and the safety threat posed to the public by the specific activity.

C.1. A pilot shall be free of use of any drug as defined in §1504.A.*Drug*, but excluding prescription medication as defined in §1504.A.*Prescription Medication*, so long as such use of prescription medication does not impair the competence of the pilot to discharge his duties.

2. Bar pilots undergoing prescribed medical treatment with a controlled substance should report this treatment to the president of the board and to the associated branch pilots doctor. The use of controlled substances as part of a prescribed medical treatment program is naturally not grounds for disciplinary action, although it is important for the board to know such use is occurring.

D. A bar pilot who voluntarily requests assistance in dealing with a personal drug or alcohol abuse problem may participate in the BPAP without the board taking action to fine or recommend action against a bar pilot, provided he stops any and all involvement with alcohol or drugs. Volunteering to participate in the BPAP will not prevent disciplinary action for a violation of this policy which has already occurred.

E.1. Narcotics or any other controlled dangerous substance made illegal by the laws of the United States or the state of Louisiana shall not be brought aboard or caused to be brought aboard any vessel no matter by whom owned, or property owned or leased by the associated branch pilots.

2. Persons, or property, coming aboard any such vessel or property will be subject to inspection.

3. The board will cooperate fully with appropriate law enforcement agencies by reporting information with respect to the violation of laws regarding illegal substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:358 (March 2003).

#### §1506. Drug Testing

A. Drug Investigated. All bar pilots shall be subject to testing for the presence of marijuana, opiates, cocaine, amphetamines, and phencyclidine.

B. Types of Testing

1. All bar pilots shall submit to reasonable scientific testing for drugs when directed by the board. All procedures and activities conducted in connection with such testing shall comply with R.S. 49:1001-1015, as those provisions may be amended from time to time.

2. A bar pilot shall be required to submit a urine specimen to be tested for the presence of drugs under the following circumstances:

a. prior to recommendation for appointment, as a part of the physical exam required in §1106.A.7 of these Rules and regulations;

b. after recommendation, whenever the pilot is required by the board to undergo a physical examination;

c. upon written complaint signed by the complainant in accordance with Chapter 16 of the Board of Review of Bar Pilots for the Port of New Orleans;

d. when the pilot is reasonably suspected of using drugs in violation of this policy;

e. at random at the discretion of the board; and

f. when the pilot is determined to be directly involved in a marine casualty or accident during the course of his activities as a pilot that results in:

i. one or more deaths;

ii. injury to any person which requires professional medical treatment beyond first aid;

iii. damage to property in excess of \$100,000; or

iv. actual or constructive loss of any vessel.

C. The board may designate a testing agency to perform any scientific test(s) necessary to detect the presence of drugs or their metabolites in a pilot's system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:358 (March 2003).

#### **§1507. Alcohol Testing**

A. The board of examiners may require a pilot to submit to a blood alcohol test under the following circumstances:

1. upon written complaint signed by the complainant in accordance with Chapter 16 of the Rules and regulations of the Board of Review of Bar Pilots of the Port of New Orleans;

2. when there exists reasonable suspicion that a pilot is performing his duties while under the influence of alcohol; or

3. when the pilot is determined to be directly involved in a marine casualty or accident of the type described in Section 806(B)(2)(d).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003).

#### **§1508. Violations of the Policy**

A. Any pilot found to be in violation of this policy may be reprimanded, fined, evaluated, and treated for drug use and have his commission suspended or revoked as provided by R.S. 34:945 and 962.

B. Any bar pilot reasonably suspected of bringing on board any vessel, no matter by whom owned, or property owned or leased by the association, or causing to bring on board a vessel or property owned or leased by the association, any narcotic or any other controlled dangerous substance made illegal by the laws of the United States of the State of Louisiana will be subject to disciplinary action either by the board or, upon recommendation of the board, by the governor of Louisiana.

C. A pilot shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:945 and 962 if:

1. he tests positive for any drug listed in §1506.A;
2. he uses any drug in violation of §1505.C;
3. he refuses to submit to reasonable scientific testing for drugs, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results;
4. tests positive for alcohol; or
5. refuses to submit to a blood alcohol test, fails to cooperate fully with the testing procedure, or in any way tries to alter the test results.

D. Any pilot who is required to undergo evaluation or treatment for alcoholism or drug abuse shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility, must be approved by the board.

E. Any pilot who believes he would be in violation of these Rules if he were to perform his duties as a bar pilot is obligated to remove himself from duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003).

#### **§1509. Test Results**

A. All drug test results shall be reviewed by a medical review officer in accordance with R.S. 49:1007.

B. Any pilot, confirmed positive, upon his written request, shall have the right of access, within seven working days of actual notice to him of his test results, to records relating to his drug tests and any records relating to the results of any relevant certification, review, or suspension/revocation-of-certification proceedings.

C. The results of the drug testing conducted pursuant to this policy and all information, interviews, reports, statements and memoranda relating to the drug testing shall, in accordance with R.S. 49:1012, be confidential and disclosed only to the board of examiners and the pilot tested, except that:

1. the board of examiners may report the results to the governor; and

2. in the event that the board of examiners determines that a hearing is required pursuant to R.S. 34:991 or 1001, there shall be no requirement of confidentiality in connection with such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003).

### **Chapter 16. Administrative Policy**

#### **§1601. Application**

A. The purpose of this section is to ensure compliance by the Board of Examiners of Bar Pilots for the Port of New Orleans with the provisions of the Louisiana Public Meeting Law and the records maintenance requirements of the provisions of R.S. 49:950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003).

#### **§1602. Meetings of Examiners**

A. All meetings and notices thereof of the board of examiners shall be conducted in accordance with the Open Meetings Law (R.S. 42.4 et seq.). The board shall meet at least once each quarter and meetings shall be called in accordance with R.S. 42:7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003).

#### **§1603. Record Keeping**

A. The board of examiners shall maintain records and conduct its hearings in accordance with R.S. 49:950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:945.C.1.

HISTORICAL NOTE: Promulgated by the Board of Examiners of Bar Pilots for the Port of New Orleans, LR 29:359 (March 2003).

Chris Keaton  
Undersecretary

0303#019

## RULE

### Department of Public Safety and Corrections Office of Corrections Services

#### Telephone Use and Policy on Monitoring of Calls CAdult and Juvenile (LAC 22:I.314)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Department of Public Safety and Corrections, Corrections Services, hereby repeals in its entirety, LAC 22:I.314, Adult Offender Telephone Use, and adopts LAC 22:I.314, Telephone Use and Policy on Monitoring of Calls CAdult and Juvenile.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

#### Chapter 3. Adult and Juvenile Services

##### Subchapter A. General

#### §314. Telephone Use and Policy on Monitoring of Calls CAdult and Juvenile

A. Purpose. The purpose of this regulation is to establish the secretary's policy regarding the use of telephones by inmates and the monitoring of inmate telephone calls at all adult and juvenile institutions.

B. To Whom This Regulation Applies. This regulation applies to deputy secretary, undersecretary, assistant secretaries and all wardens. It is the responsibility of each warden to implement this regulation and convey its contents to the inmate population, employees, and the public.

C. Policy. It is the secretary's policy that uniform telephone procedures Cincluding the ability to monitor and/or record inmate telephone calls to preserve the security and orderly management of the institution and to protect the public safety Cbe established and adhered to at all institutions. Each institution will offer inmates (including the hearing impaired) reasonable access to telephone communication without overtaxing the institution's ability to properly maintain security and to avoid abuse of this privilege on the part of any inmate.

D. Definition. Inmate refers to anyone committed to the custody of the department whether as an adult or juvenile in this context.

#### E. Procedures

##### 1. General

a. Each inmate will be assigned a personal identification number (PIN) which must be used when placing outgoing telephone calls. The PIN will be the inmate's DOC number or JIRMS number.

b. At the juvenile institutions, one unique PIN, not the inmate's JIRMS number, will be utilized for calling the PZT Hotline only.

c. Each inmate will provide his assigned institution a master list of up to 20 frequently called telephone numbers inclusive of all family, personal, and legal calls. Each inmate's outgoing telephone calls will be limited to those telephone numbers he has placed on his master list. Changes may be made to the master list at the discretion of the warden, but no less than once each quarter. These changes may be input by the contractor or by appropriately trained institutional staff.

i. Changes to the master list for parents of juvenile offenders and attorneys representing a juvenile offender are to be expedited. All attempts should be made to institute such changes within six working days. For parents, the six days shall begin from written notification by the offender to the appropriate institutional staff. For an attorney, the time period shall begin upon receipt of the offender's written request to the appropriate institutional staff, if the offender is 18 years or older. For offenders under the age of 18, the time period shall begin upon receipt of written notice from the parent confirming the attorney as the legal representative of their child.

d. At juvenile institutions, regardless of custody status, offenders will be provided an opportunity to make telephone calls home at state expense when the offender's case worker determines that the call promotes the goal of the offender's intervention plan.

i. Offenders will also be given meaningful access to telephones for privileged communications with their attorneys.

e. For new inmates, PIN and master list numbers will be input into the telephone system upon intake at the Reception and Diagnostic Centers.

f. Upon the request of a telephone subscriber, the institution may block a telephone number and prevent the subscriber from receiving calls from an inmate housed in the facility. To accomplish a block of a particular number for all state facilities, the institution should contact the contractor to request that a universal block be put into place.

#### 2. Dormitory Housing CMinimum or Medium Custody

a. Personal or Family Calls (Routine). Collect telephone access should be available on a relatively non-restricted basis. The specific hours in the various living areas at the individual institutions shall be established by the Warden of each institution. The Warden shall communicate the telephone schedule to the inmate population. A time limit should be established.

b. Personal or Family Calls (Emergency). Requests for access outside of normally scheduled hours may be made through the dormitory officer, counselor, or shift supervisor.

c. Legal Calls. The Warden shall establish a schedule for legal calls. Inmates are generally able to place legal calls during the lunch period or after the afternoon count (when "normal office hours" are in effect for attorneys). The Warden should establish an alternate procedure if this is not adequate.

#### 3. Cellblock Housing CMaximum Custody

a. Personal or Family Calls (Routine). Collect telephone access is generally located in the cellblock lobby. (In those situations where the telephone is on the tier, the inmate may be allowed access during the shower or exercise period.) Lobby placement may restrict inmate access. Therefore, posted policy may limit routine personal calls for inmates assigned to cellblocks. Access may vary by inmate classification status. A time limit should be established.

b. Personal or Family Calls (Emergency). In all subclasses of maximum custody, the inmate is required to request consideration for this type call from the warden's designee (shift supervisor, unit major, or program staff) who decides if the justification the inmate presents warrants the request. That decision is then logged. No frequency for this



type call is established as the severity and duration of the emergency may vary.

NOTE: Please refer to the "Emergency Review" provisions of the Administrative Remedy Procedure. Timely review can be solicited by the inmate.

c. Legal Calls. The warden shall establish a procedure for placing legal calls on a reasonable basis during normal attorney office hours. Each housing unit shall maintain a legal telephone log for the purpose of monitoring the number of legal calls made by inmates on a weekly basis.

4. Incoming Calls.

a. Personal or Family Calls (Routine). Messages are not accepted or relayed on a routine basis for any inmate.

b. Personal or Family Calls (Emergency). The warden should establish a procedure for inmate notification of legitimate personal or family emergencies communicated to the institution.

c. Legal Calls. Inmates may be given notice that their attorney has requested contact. Complete verification is required prior to processing. If minimum or medium custody, the inmate may call from the dormitory during lunch or after work. If maximum custody, the inmate may be allowed to call during normal attorney office hours at a time which does not interfere with orderly operation of the unit.

5. Monitoring

a. Inmates shall be put on notice of the following.

i. Telephone calls in housing areas are subject to being monitored and/or recorded and that "use" constitutes "consent."

ii. It is the inmate's responsibility to advise all other parties that conversations are subject to being monitored and/or recorded.

iii. A properly placed telephone call to an attorney will not be monitored and/or recorded unless reasonable suspicion of illicit activity has resulted in a formal investigation and such action has been authorized by the secretary or designee.

iv. The telephone system will normally terminate a call at the end of the authorized period, (normally 15 minutes); however, the warden or his designee may authorize calls of a longer duration as circumstances warrant.

v. The system will automatically broadcast recorded messages indicating that the telephone call is originating from a correctional facility.

b. Inmates shall not be allowed access to employee home telephone numbers and shall not be allowed to call any staff member of the department.

c. Each institution will advise their inmate population of the proper way to place a legal call.

d. Only personnel authorized by the warden may monitor inmate telephone calls. Information gained from monitoring calls which affects the security of the institution or threatens the protection of the public will be communicated to other staff members or other law enforcement agencies. Telephone calls to attorneys may not be routinely monitored (see Clause E.5.a.iii of this Section); staff will immediately disconnect from any inmate telephone call if it appears that is the case. All other information shall be held in strict confidence.

e. Inmates being processed into the system through the Reception and Diagnostic Centers will be required to "consent" in writing that their telephone calls are subject to being monitored and/or recorded. A copy of this "consent" shall be placed in the inmate's institutional record.

f. Each institution's orientation manual must include the information contained in this regulation as a means to notify the inmate population and verbal notification must be given in their orientation program. Existing inmate populations shall be put on notice by a sign posted at each inmate telephone. The sign shall reflect the following information:

6. Remote Call Forwarding

a. Remote Call Forwarding (RCF) is a mechanism by which inmates employ a local telephone number that automatically forwards the telephone call to a pre-selected number generally located out of the local calling area code or long distance. RCF in essence is an automated three-way call.

b. RCF is also known as automated call forwarding or PBX call forwarding. Use of this automated and remote mechanism represents significant security risks for several reasons. The telephone call terminated number (the end destination of the call) cannot be readily identified or verified. This number is not a traditional telephone number located at a residence, business or other such location but merely a number within the telephone switching equipment local to the facility where the inmate is housed.

c. RCF initiated calls to an unidentified terminated number can and are being easily forwarded again to a cell phone and other unauthorized telephones. This forwarding is done through the normal three-way call hook ups. This in fact negates the security mechanisms achieved by the requirement of approved telephone lists. Safeguards to prevent calls to victims, to blocked or restricted numbers or to prevent other unauthorized call activities are defeated by the use of an RCF number.

d. RCF usage creates an opportunity to conduct criminal or illegal or un-authorized activities since the end call location is not readily being identified, verified or its actual location known. This affords untold opportunity for inmates to engage in potential scams, to call victims, to facilitate escape attempts and to engage in other conduct representing significant security risks to the facility.

e. The inmate population should be put on notice that all third-party telephone calls, including RCF calls, are strictly prohibited and such activity will result in appropriate disciplinary action.

f. Wardens shall develop a monitoring system to analyze the frequency of local calls. High frequency may indicate RCF utilization. When RCF calls are discovered, a system wide block of the number should be initiated pursuant to Subparagraph E.1.f of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:829.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Correction Services, LR 29:360 (March 2003).

Richard L. Stalder  
Secretary

0303#024

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Definitions, General Provisions/Authority of the Division, Imposition of Sanctions, Application and License, Surveillance and Division Room Requirements, Enforcement Actions of the Board (LAC 42:VII.1701, 2101, 2325; IX. 2101, 4103; XI. 2405; XIII.1701, 2101, 2325, and 3305)

The Louisiana Gaming Control Board hereby adopts amendments to LAC 42:VII.1701, 2101, 2325, IX.2101, 4103, XI.2405, XIII.1701, 2101, 2325, and 3305, in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 42**

**LOUISIANA GAMING**

**Part VII. Pari-Mutuel Live Racing Facility Slot Machine Gaming**

**Chapter 17. General Provisions**

**§1701. Definitions**

A. As used in the regulations, the following terms have the meaning described below.

\*\*\*

**Affiliate** Any person who directly or indirectly controls, is controlled by, or is under common control of another person.

\*\*\*

**Person** Any individual, partnership, association, joint stock association, trust, corporation, or other business entity whether incorporated or not.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:728 (April 2000), LR 29:362 (March 2003).

**Chapter 21. Licenses and Permits**

**§2101. General Authority of the Board and Division**

A. The board and/or the division shall have the authority to call forth any person who, in the board and/or division's opinion, has the ability to exercise influence over a licensee, permittee, applicant or the gaming industry, and such person shall be subject to all suitability requirements. In the event a person is found unsuitable, then no licensee, permittee or applicant shall have any association or connection with such person. No licensee, permittee or applicant shall have any association or connection with any person that has had an application for a license or permit denied or had a license or permit revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:732 (April 2000), LR 29:362 (March 2003).

**Chapter 23. Compliance, Inspections, and Investigations**

**§2325. Imposition of Sanctions**

- A. - D. ...
- E. Penalty Schedule

Section Reference	Description	Base Fine	Proscriptive Period (Months)
***			
4209	Approval of New Electronic Gaming Devices	5,000	12
***			

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:1321 (June 2000), amended LR 27:225 (December 2001), LR 28:1028 (May 2002), repromulgated LR 28:2371 (November 2002), LR 29:362 (March 2003).

**Part IX. Landbased Casino Gaming**

**Subpart 1. Economic Development and Gaming Corporation**

**Chapter 21. Applications; Suitability, Permitting and Licensing**

**§2101. General Provisions**

A. The board and/or division shall have the authority to call forth any person who, in the board and/or division's opinion, exercises influence over the Casino Operator, Casino Manager, a Permittee, an Applicant or the gaming industry, and such person shall be subject to all suitability requirements. In the event a person is found unsuitable, then no Casino Operator, Casino Manager, Permittee or Applicant shall have any association or connection with such person. No Casino Operator, Casino Manager, Permittee or Applicant shall have any association or connection with any person that has had an application for a license or permit denied or had a license or permit revoked.

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 25:1907 (October 1999), LR 29:362 (March 2003).

**Chapter 41. Enforcement Actions**

**§4103. Enforcement Actions of the Board**

- A. - B. ...
- C. Penalty Schedule

Section Reference	Description	Base Fine	Proscriptive Period (Months)
***			
4209	Approval of New Electronic Gaming Devices	5,000	12
***			

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1974 (October 1999), amended LR 26:2307 (October 2000), LR 27:2255 (December 2001), repromulgated LR 28:344 (February 2002), LR 28:1029 (May 2002), LR 29:362 (March 2003).

**Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2405. Application and License**

- A. New and Renewal Applications
  - 1. All applications for a license shall be submitted on forms provided by the division and mailed to: Louisiana

State Police, Gaming Enforcement Section, Video Gaming Division, at the address provided by the division.

2. - 15. ...

**B. Requirements for Licensing**

1. - 3.b. ...

c. If a licensee fails to file a complete renewal application on or before forty five days prior to the license expiration date, the division may assess a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1000 for the third violation.

4. The appropriate annual fee shall be paid by all licensees regardless of the expiration date of the license on or before July 1 of each year.

5. If a renewal application has not been filed with the division on or before close of business on the date of expiration, the license is expired, and a new application, along with all appropriate fees, shall be required to be filed.

B.6. - D.7. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 27:15 and 24.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:955 (May 1998), LR 26:346 (February 2000), LR 26:2322 (October 2000), LR 27:61 (January 2001), LR 29:362 (March 2003).

**Part XIII. Riverboat Gaming**

**Subpart 2. State Police Riverboat Gaming Division**

**Chapter 17. General Provisions**

**§1701. Definitions**

A. As used in the regulations, the following terms have the meaning described below.

\*\*\*

*Affiliate* Any person who directly or indirectly controls, is controlled by, or is under common control of another person.

\*\*\*

*Person* Any individual, partnership, association, joint stock association, trust, corporation, or other business entity whether incorporated or not.

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:501 et seq.; R.S. 27:15 and 24.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 19:1176 (September 1993), amended LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 22:1139 (November 1996), LR 24:344 (February 1998), LR 26:1317 (June 2000), LR 29:363 (March 2003).

**Chapter 21. Licensees and Permits**

**§2101. General Authority of the Division**

A. The board and/or division shall have the authority to call forth any person who, in the board and/or division's opinion, exercises influence over a licensee, permittee, applicant or the gaming industry, and such person shall be subject to all suitability requirements. In the event a person is found unsuitable, then no licensee, permittee, or applicant shall have any association or connection with such person. No licensee, permittee, or applicant shall have any association or connection with any person that has had an

application for a license or permit denied or had a license or permit revoked.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:501 et seq.; R.S. 27:15 and 24.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 19:1176 (September 1993), amended LR 21:702 (July 1995), LR 29:363 (March 2003).

**Chapter 23. Compliance, Inspections and Investigations**

**§2325. Imposition of Sanctions**

A. - D. ...

E. Penalty Schedule

Section Reference	Description	Base Fine	Proscriptive Period (Months)
***			
4209	Approval of New Electronic Gaming Devices	5,000	12
***			

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 27:15 and 26.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Gaming Control Board, LR 26:1318 (June 2000), LR 27:2255 (December 2001), LR 28:1029 (May 2002), LR 29:363 (March 2003).

**Chapter 33. Surveillance and Security**

**§3305. Surveillance and Division Room Requirements**

A. There shall be, for the exclusive use of division agents and for the use by employees of the riverboat gaming operation, rooms approved by the division for monitoring and recording purposes. The room for the exclusive use of the division shall be designated the division room. The room for the use of the employees of the riverboat gaming operation shall be designated the surveillance room.

B. - H. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:501 et seq.; R.S. 27:15 and 24.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:1559 (September 2001), LR 29:363 (March 2003).

Hillary J. Crain  
Chairman

0303#098

**RULE**

**Department of Revenue  
Policy Services Division**

Alternative Dispute Resolution  
(LAC 61:III.301-335)

Under the authority of R.S. 47:1511 and 1522 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary adopts LAC 61:III.301-

335, the rules and regulations governing alternative dispute resolution.

The secretary of the Department of Revenue is authorized by R.S. 47:1511 to adopt reasonable rules and regulations to enforce the provisions relating to the taxes collected and administered by the department. Louisiana Administrative Code Title 61, Part III, §§301-335, establishes the method and the procedures available to implement R.S. 47:1522, which allows the Department of Revenue to use alternative dispute resolution as a means of resolving issues between the taxpayer and the department. Alternative dispute resolution will provide a voluntary, confidential and cooperative means of resolving tax disputes of less than \$1 million, which will reduce the costs and risks of litigation for the taxpayer and the department. Alternative dispute resolution will also expedite the tax collection and refund processes. The rules and regulations for the department's Alternative Dispute Resolution Program are modeled on the Multistate Tax Commission's Alternative Dispute Resolution Program.

#### **Title 61**

### **REVENUE AND TAXATION**

## **Part III. Department of Revenue; Administrative Provisions and Miscellaneous**

### **Chapter 3. Alternative Dispute Resolution Procedures**

#### **§301. Definitions**

A. For purposes of this chapter, the following terms have the meanings ascribed to them.

*Alternative Dispute Resolution*—procedures for settling disputes by means other than litigation.

*Arbitration*—a binding process in which the department and taxpayer submit disputed issues and evidence to an arbitrator and a decision is rendered by the arbitrator.

*Arbitrator*—a neutral third party chosen by the department and taxpayer to hear their claims and render a decision.

*Enrolled Agent*—an individual who has demonstrated technical competence in the field of taxation and is licensed to represent taxpayers before all administrative levels of the Internal Revenue Service.

*Hearing*—a proceeding in which a neutral third party receives testimony or arguments and reviews documents to determine issues of fact and legal conclusions in order to render a decision based on the evidence presented.

*Party*—a taxpayer or department representative involved in an alternative dispute resolution process.

*Secretary*—the Secretary of the Louisiana Department of Revenue.

*Session*—the period of time during which the arbitrator meets with the parties to discuss the issues and listens to the arguments presented in order to reach a decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:364 (March 2003).

#### **§303. Type of Alternative Dispute Resolution Process**

A. The disputed issue(s) may be resolved by arbitration as agreed upon by the taxpayer and the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:364 (March 2003).

#### **§305. Initiation of Arbitration**

A. The secretary may select cases whose total value as of the date of selection for binding arbitration is less than \$1 million. Once a case has been selected for arbitration, notice will be sent to the taxpayer regarding the selection within 30 days.

B. The taxpayer may give written notice to the department of the taxpayer's desire to participate in arbitration. The notice must be signed by the taxpayer or representative of the taxpayer and contain the taxpayer's name, tax identification number, address, telephone number, fax number, and e-mail address and the taxpayer's representative e-mail address as well as a brief description of the nature of the dispute and the issues. The notice must also state the relief requested, the reasons supporting the relief, and any other relevant and reliable information supporting the claim.

C. Neither the department nor the taxpayer has the right to mandate or force the opposing party into arbitration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:364 (March 2003).

#### **§307. Persons Authorized to Participate in Arbitration**

A. Individuals, Partnerships, and Corporations. Any individual taxpayer participating in arbitration with the department may appear and act for himself or for a partnership of which he is a partner with authority to act on behalf of the partnership's members. A corporation, limited liability company, or limited liability partnership may be represented by a bona fide officer of the corporation upon presentation of a corporate resolution or other documentation evidencing the officer's authority to act on behalf of the organization.

B. Attorneys. Attorneys at law, qualified and licensed under the laws of the state, are entitled to represent any taxpayer participating in arbitration with the department. The arbitrator may permit attorneys at law, qualified and licensed under the laws of the several states or the District of Columbia to represent any taxpayer participating in arbitration with the department, in the same manner as these attorneys are permitted to practice in the courts of Louisiana.

C. Certified Public Accountants. Certified public accountants qualified and licensed under the laws of the state are entitled to represent any taxpayer participating in arbitration with the department. The arbitrator may permit certified public accountants, qualified and licensed under the laws of the several states or the District of Columbia to represent any taxpayer participating in arbitration with the department, in the same manner as these certified public accountants are permitted to practice in Louisiana.

D. Enrolled Agents. Enrolled agents qualified and licensed to practice before the Internal Revenue Service are entitled to represent any taxpayer participating in arbitration with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:364 (March 2003).

#### **§309. Registry of Arbitrators**

A. The department will maintain a registry of arbitration companies authorized to participate in the alternative dispute resolution process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:364 (March 2003).

**§311. Time Delay for Providing Names of Arbitrators**

A. As soon as practical, but not more than 30 business days after consent of the parties to participate in arbitration, the department will send to the taxpayer or the taxpayer's representative the names of potential arbitration companies to provide case management services for the arbitration session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:365 (March 2003).

**§313. Selection of Arbitration Company**

A. The department and taxpayer will select an arbitration company from the Registry maintained by the department. The arbitration company will select the arbitrator to preside over the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:365 (March 2003).

**§315. Disclosure of Conflict of Interest**

A. An arbitrator must have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed, in writing, to all parties and all parties agree, in writing, that the person may continue to serve. If an arbitrator is disqualified by either party, another arbitrator will be selected by the arbitration company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:365 (March 2003).

**§317. Procedures for Arbitration**

A. The arbitrator will take necessary steps to avoid delay and to achieve a just, speedy, and cost-effective resolution. The department and taxpayer will cooperate in the exchange of documents, exhibits, and information within either party's control. In addition, the department and taxpayer may conduct discovery as agreed upon by all parties. However, the arbitrator may provide for or place limitations on the discovery as the arbitrator deems appropriate. At the request of the department or the taxpayer, the arbitrator may require the deposition of any person who may possess information vital to the just resolution of the matter.

B. The arbitrator will select a hearing date. Each party must notify the arbitrator in writing at least 10 business days before the initial arbitration session of the following:

1. the party's intention to present witnesses;
2. whether the party will be represented by counsel; and
3. who will be present at the arbitration.

C. The department and taxpayer must submit a brief statement of facts, law, and issues to be resolved. The statement may not exceed 15 legal-size pages without prior approval from the arbitrator.

D. The arbitrator will distribute to the department and taxpayer the information provided in Subsection B and inform the parties of the arbitration process to be followed at least five business days before the initial arbitration session.

Except where specified in the regulation, the arbitrator will determine the process to be followed.

E. The rules of evidence in arbitration will be the rules of evidence followed in the state district courts of Louisiana.

F. Any party desiring a stenographic or other recording of the proceedings must make arrangements directly with a stenographer or the person responsible for recording the proceedings. The party seeking to record the proceeding must notify the arbitrator and all other parties of the arrangements at least five business days before the arbitration hearing. The requesting party or parties shall pay the recording costs and the recording or transcript shall be made available to the arbitrator and the other parties for inspection and copying at a date, time, and place determined by the arbitrator.

G. If an arbitration decision is rendered on a case pending in any state court or the Louisiana Board of Tax Appeals, the decision will be entered in the court records.

H. The decision by the arbitrator will be made promptly and, unless otherwise agreed by the parties or specified by law, no later than 30 business days from the date of the closing of the arbitration hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:365 (March 2003).

**§319. Discovery**

A. The arbitrator will set forth the conditions of discovery. Any extensions of discovery must be in writing and approved by the arbitrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:365 (March 2003).

**§321. Arbitration Hearing**

A. In order to facilitate the arbitration process, the selected arbitrator will conduct hearings. Each party will be given an opportunity to present the facts, evidence, and argument that support its position regarding the disputed tax issue at the hearing. Hearings will be private and all matters will remain confidential. The only individuals who may participate in hearings will be the taxpayer, taxpayer representatives, department representatives, and any witnesses to be called.

B. Date, Time and Place of Hearing. Hearings will be held at the LaSalle Building in Baton Rouge or at any other place designated by the arbitrator with consideration given to the location and convenience of the parties and their witnesses. All witnesses will be sequestered prior to giving testimony.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:365 (March 2003).

**§323. Sequence of the Arbitration Hearing**

A. Unless otherwise determined by the arbitrator, the following sequence will be followed at the hearing.

1. Introduction. The arbitrator may make an introduction.

2. Opening Statements. The taxpayer or his representative will make an opening statement followed by the department's representative.

3. Taxpayer's Case. The taxpayer may introduce evidence, examine witnesses, and submit exhibits. The department's attorney or representative may cross-examine the witnesses.

4. Department's Case. The department may introduce evidence, examine witnesses, and submit exhibits. The taxpayer or taxpayer's representative may cross-examine the witnesses.

5. Evidence Procedure. Each party will have the opportunity to present relevant and credible evidence during the hearing. All statements will be made under oath administered by the arbitrator. The Rules of Evidence followed in the state district courts of Louisiana will apply to all evidence presented and objections will be permitted.

6. Rebuttal. Presentation of the evidence of the taxpayer in rebuttal and the argument of the taxpayer followed by the argument of the department, and of the taxpayer in rebuttal.

7. Summation. Each party may present a closing statement.

8. Concluding Remarks. The arbitrator may make closing remarks concerning the case.

9. Judgment. The arbitrator shall render a decision within 30 business days after the date of the close of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:365 (March 2003).

### **§325. Ex Parte Communication with the Arbitrator**

A. No party or party representative may directly communicate with an arbitrator except at a hearing or during a scheduled conference concerning any issue related to the arbitration matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:366 (March 2003).

### **§327. Privacy**

A. All arbitration sessions are private and confidential. To ensure the privacy of the arbitration sessions, only the parties and their representatives may attend the sessions. All parties participating in or attending a session are required to sign a confidentiality agreement. Any party that violates this confidentiality provision is subject to sanctions at the request of the other party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:366 (March 2003).

### **§329. Confidentiality**

A. Except as authorized or required by law, no one participating in the session may disclose the existence, content, or results of the session without the written consent of all parties. Each participant to any process conducted, including the arbitrator, must execute a confidentiality agreement before beginning arbitration. Except as authorized, required, or consented to, no party, arbitrator, or any agent or other representative may make public, offer or introduce as evidence, or otherwise refer to in any

administrative, judicial, or other proceeding, any statement made or any document or item of evidence provided during arbitration or any finding, conclusion, order, or result, or lack thereof relating to the process. This prohibition applies but is not limited to the following matters:

1. views expressed or suggestions made by a party with respect to possible settlement of the dispute;

2. admissions made by any party during arbitration;

3. statements made or views expressed by any witnesses, arbitrator, or other persons privy to the arbitration session; or

4. the fact that another party had or had not indicated a willingness to accept a proposal settlement.

B. The arbitrator is subject to the terms and conditions set forth in R.S. 47:1508 regarding the confidential character of tax records.

C. All returns, reports, and other documents presented during the arbitration session may be destroyed by order of the secretary after five years from the last day of December of the year in which the tax to which the records pertain became due, but not less than one year after receipt of the last payment of tax to which the records pertain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:366 (March 2003).

### **§331. Fees and Expenses**

A. Each party will bear the fees and expenses for its own counsel, expert witnesses, travel, and preparation and presentation of its case. Except as otherwise agreed by the parties, the fees and expenses of the arbitrator will be borne equally by the taxpayer and the department in accordance with the arbitration company's fee schedule.

B. If an arbitration session has been scheduled and a party fails to appear at the session, the party failing to appear will be responsible for the payment of the reasonable costs and fees of the arbitrator and the reasonable travel expenses incurred by the other party, unless the party has provided reasonable notice in writing to the arbitrator and all other parties that they will not appear. It will be presumed, subject to a contrary showing under the circumstances, that giving five business days advanced written notice is reasonable notice.

C. If reasonable notice is not provided, the arbitrator shall determine if there was good cause for the failure to appear.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:366 (March 2003).

### **§333. Taxpayer's Duty to Protect Protests and Appeals**

A. It is the duty of the taxpayer to protect his right to protest or appeal any assessment or proposed assessment or to pursue any right to refund relating to any issue that may also be subject to the arbitration process. Compliance with all conditions and time limits for perfecting and pursuing any and all administrative and judicial protests and appeals or requests for refund are the sole responsibility of the taxpayer. Any agreement between a taxpayer, taxpayer

representative, and a representative of the department to alter the conditions or time limits must be authorized by the secretary of the Department of Revenue and executed in writing by both parties to be effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:366 (March 2003).

**§335. Notice of a Waiver or Extension**

A. When required by any party, notice that a written waiver or extension of any and all applicable prescriptive periods must be executed to each party's satisfaction. No party will be required to execute any waiver or extension of a statutory limitation as a condition of participating in an alternative dispute resolution process. Unless otherwise agreed to by the parties, any waiver or extension of prescription will apply to only those issues agreed upon as subject to the alternative dispute resolution process. If a written waiver or extension is required by a party, no alternative dispute resolution process will begin until an agreement has been executed.

B. The department and taxpayer will have 30 business days to resolve the issues and execute the waiver or extension. If no agreement is reached during that period of time, the arbitrator will terminate the alternative dispute resolution process. In the event that an alternative dispute resolution process has been terminated, the parties have a right to initiate a new alternative dispute resolution process. If the second attempt to initiate an alternative dispute resolution process fails, any subsequent attempts will not be allowed unless the arbitrator agrees it is in the parties best interest to continue to arrive at an agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:367 (March 2003).

Cynthia Bridges  
Secretary

0303#038

**RULE**

**Department of Revenue  
Tax Commission**

**Ad Valorem Tax**

(LAC 61:V.303, 703, 907, 1503, 2503, 2705, and 2707)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950, et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, the Tax Commission intends has amended and/or repealed sections of the Louisiana Tax Commission Real/Personal Property Rules and Regulations for use in the 2003 (2004 Orleans Parish) tax year.

This Rule is necessary in order for ad valorem tax assessment tables to be disseminated to property owners and local tax assessors no later than the statutory valuation date of record of January 1, 2003. Cost indices required to finalize these assessment tables were not available to this office until late October, 2002. The effective date of this Rule is January 1, 2003.

**Title 61**

**REVENUE AND TAXATION**

**Part V. Ad Valorem Taxation**

**Chapter 3. Real and Personal Property**

**§303. Real Property**

A. - B.2. ...

C. The Louisiana Tax Commission has ordered all property to be reappraised in all parishes for the 2004 tax year. Property is to be valued as of January 1, 2003, in Orleans Parish the same as applies to property in all other parishes.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003).

**Chapter 7. Watercraft**

**§703. Tables C Watercraft**

A. Floating Equipment C Motor Vessels

Floating Equipment C Motor Vessels				
Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2002	0.997	1	94	.94
2001	1.003	2	87	.87
2000	1.011	3	80	.81
1999	1.029	4	73	.75
1998	1.033	5	66	.68
1997	1.042	6	58	.60
1996	1.058	7	50	.53
1995	1.074	8	43	.46
1994	1.113	9	36	.40
1993	1.144	10	29	.33
1992	1.167	11	24	.28
1991	1.181	12	22	.26
1990	1.205	13	20	.24

B. Floating Equipment C Barges (Nonmotorized)

Floating Equipment C Barges (Nonmotorized)				
Cost Index (Average)		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2002	0.997	1	97	.97
2001	1.003	2	93	.93
2000	1.011	3	90	.91
1999	1.029	4	86	.88
1998	1.033	5	82	.85
1997	1.042	6	78	.81
1996	1.058	7	74	.78
1995	1.074	8	70	.75
1994	1.113	9	65	.72
1993	1.144	10	60	.69
1992	1.167	11	55	.64
1991	1.181	12	50	.59
1990	1.205	13	45	.54
1989	1.237	14	40	.49
1988	1.303	15	35	.46
1987	1.359	16	31	.42
1986	1.378	17	27	.37
1985	1.392	18	24	.33
1984	1.412	19	22	.31
1983	1.451	20	21	.30
1982	1.477	21	20	.30

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February

1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003).

**Chapter 9. Oil and Gas Properties**

**§907. Tables C Oil and Gas**

A. ...

1. Oil, Gas and Associated Wells; Region C North Louisiana



<b>Table 907.A-1</b>				
<b>Oil, Gas and Associated Wells</b>				
<b>Region 1C North Louisiana</b>				
<b>Producing Depths</b>	<b>CostC New by depth, per foot</b>		<b>15 percent of CostC New by depth, per foot</b>	
	<b>\$Oil</b>	<b>\$Gas</b>	<b>\$Oil</b>	<b>\$Gas</b>
0 - 1,249 ft.	11.39	26.81	1.71	4.02
1,250 - 2,499 ft.	11.32	16.00	1.70	2.40
2,500 - 3,749 ft.	13.38	15.23	2.01	2.28
3,750 - 4,999 ft.	15.27	17.02	2.29	2.55
5,000 - 7,499 ft.	20.42	21.47	3.06	3.22
7,500 - 9,999 ft.	30.67	29.05	4.60	4.36
10,000 - 12,499 ft.	38.41	37.00	5.76	5.55
12,500 - Deeper ft.	N/A	73.50	N/A	11.03

2. Oil, Gas and Associated Wells; Region 2C South Louisiana

<b>Table 907.A-2</b>				
<b>Oil, Gas and Associated Wells</b>				
<b>Region 2C South Louisiana</b>				
<b>Producing Depths</b>	<b>CostC New by depth, per foot</b>		<b>15% of CostC New by depth, per foot</b>	
	<b>\$Oil</b>	<b>\$Gas</b>	<b>\$Oil</b>	<b>\$Gas</b>
0 - 1,249 ft.	81.27	81.14	12.19	12.17
1,250 - 2,499 ft.	78.45	85.94	11.77	12.89
2,500 - 3,749 ft.	63.64	80.01	9.55	12.00
3,750 - 4,999 ft.	46.08	55.56	6.91	8.33
5,000 - 7,499 ft.	55.60	54.73	8.34	8.21
7,500 - 9,999 ft.	62.03	62.08	9.30	9.31
10,000 - 12,499 ft.	63.47	73.83	9.52	11.07
12,500 - 14,999 ft.	77.82	93.73	11.67	14.06
15,000 - 17,499 ft.	110.56	118.93	16.58	17.84
17,500 - 19,999 ft.	93.73	153.50	14.06	23.03
20,000 - Deeper ft.	125.55	213.22	18.83	31.98

3. Oil, Gas and Associated Wells; Region 3C Offshore State Waters

<b>Table 907.A-3</b>				
<b>Oil, Gas and Associated Wells</b>				
<b>Region 3C Offshore State Waters*</b>				
<b>Producing Depths</b>	<b>CostC New by depth, per foot</b>		<b>15% of CostC New by depth, per foot</b>	
	<b>\$Oil</b>	<b>\$Gas</b>	<b>\$Oil</b>	<b>\$Gas</b>
0 - 1,249 ft.	N/A	N/A	N/A	N/A
1,250 - 2,499 ft.	317.22	433.06	47.58	64.96
2,500 - 3,749 ft.	238.49	321.73	35.77	48.26
3,750 - 4,999 ft.	247.08	258.15	37.06	38.72
5,000 - 7,499 ft.	204.54	175.70	30.68	26.36
7,500 - 9,999 ft.	191.42	168.06	28.71	25.21
10,000 - 12,499 ft.	188.72	169.44	28.31	25.42
12,500 - 14,999 ft.	179.89	164.02	26.98	24.60
15,000 - 17,499 ft.	162.60	222.99	24.39	33.45
17,500 - Deeper ft.	462.60	332.74	69.39	49.91

A.4. - B.1. ...

2. Serial Number to Percent Good Conversion Chart

Table 907.B-2 Serial Number to Percent Good Conversion Chart			
Year	Beginning Serial Number	Ending Serial Number	25 Year Life Percent Good
2002	226717	Higher	96
2001	225352	226716	92
2000	223899	225351	88
1999	222882	223898	84
1998	221596	222881	80
1997	220034	221595	76
1996	218653	220033	72
1995	217588	218652	68
1994	216475	217587	64
1993	215326	216474	60
1992	214190	215325	56
1991	212881	214189	52
1990	211174	212880	48
1989	209484	211173	44
1988	207633	209483	40
1987	205211	207632	36
1986	202933	205210	32
1985	Lower	202932	30*
VAR.	900000	Higher	50

\* Reflects residual or floor rate.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988),

LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003).

**Chapter 15. Aircraft**

**§1503. Aircraft (Including Helicopters) Table**

A. Aircraft

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (10 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2002	0.997	1	92	.92
2001	1.003	2	84	.84
2000	1.011	3	76	.77
1999	1.029	4	67	.69
1998	1.033	5	58	.60
1997	1.042	6	49	.51
1996	1.058	7	39	.41
1995	1.074	8	30	.32
1994	1.113	9	24	.27
1993	1.144	10	21	.24
1992	1.167	11	20	.23

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:206 (February

1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003).

**Chapter 25. General Business Assets**

**§2503. Tables Ascertain Economic Lives, Percent Food and Composite Multipliers of Business and Industrial Personal Property**

A. ...

B. Cost Indices

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2002 = 100*
2002	1	1100.0	0.997
2001	2	1093.4	1.003
2000	3	1084.3	1.011
1999	4	1065.0	1.029
1998	5	1061.8	1.033
1997	6	1052.7	1.042
1996	7	1036.0	1.058
1995	8	1020.4	1.074
1994	9	985.0	1.113
1993	10	958.0	1.144
1992	11	939.8	1.167
1991	12	928.5	1.181
1990	13	910.2	1.205
1989	14	886.5	1.237
1988	15	841.4	1.303
1987	16	806.9	1.359
1986	17	795.4	1.378
1985	18	787.9	1.392
1984	19	776.4	1.412
1983	20	755.8	1.451
1982	21	742.4	1.477
1981	22	709.2	1.546
1980	23	642.8	1.706
1979	24	584.4	1.876
1978	25	534.7	2.050
1977	26	497.1	2.206

\*Reappraisal Date: January 1, 2002 - 1096.4 (Base Year)

C.1. - 4. ...

D. Composite Multipliers

Table 2503.D Composite Multipliers 2003 (2004 Orleans Parish)								
Age	3 Yr	5 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr
1	.70	.85	.90	.92	.94	.95	.97	.98
2	.49	.69	.79	.84	.87	.90	.93	.95
3	.34	.53	.68	.77	.81	.86	.91	.94
4	.21	.35	.56	.69	.75	.81	.88	.93
5		.24	.44	.60	.68	.75	.85	.90
6		.21	.34	.51	.60	.71	.81	.88
7			.28	.41	.53	.66	.78	.86
8			.24	.32	.46	.59	.75	.84
9			.22	.27	.40	.55	.72	.83
10				.24	.33	.49	.69	.81
11				.23	.28	.43	.64	.79
12					.26	.37	.59	.76
13					.24	.31	.54	.72
14						.28	.49	.69
15						.27	.46	.68
16						.27	.42	.65
17							.37	.61
18							.33	.54
19							.31	.48
20							.30	.44
21							.30	.38
22								.36
23								.36
24								.38
25								.41
26								.44

Data sources for tables are:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003).

**Chapter 27. Guidelines for Application, Classification and Assessment of Land Eligible To Be Assessed at Use Value**

**§2705. Classification**

A. - B. ...

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Bienville	Plaquemines
***	
Jefferson Davis	Vernon
***	

C. ...

AUTHORITY NOTE: Promulgated in accordance with LSA - Constitution of 1974, Article VII, '18, R.S. 47:2302, R.S. 47:2303 and R.S. 47:2304.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:289 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 15:1097 (December 1989), LR 19:212 (February 1993), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 25:318 (February 1999), LR 26:510 (March 2000), LR 27:428 (March 2001), LR 28:521 (March 2002), LR 29:372 (March 2003).

**§2707. Map Index Table**

<b>Table 2707 Map Index Listing of General Soil Maps &amp; Modern Soil Surveys For The State of Louisiana Published By U. S. Dept. of Agriculture, Natural Resources Conservation Service In Cooperation With Louisiana Agricultural Experiment Station</b>			
Parish	Date (General)	Map No. (General)	Date Published or Status (Modern)
***			
Beauregard	Nov., 1971	4-R-28744-A	September, 2002
***			
East Feliciana	Nov., 1971	4-R-17441-A	November, 2001
***			
West Feliciana	Sept., 1975	4-R-29109-A	November, 2001
***			

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 and R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:290 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:946 (November

1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 25:319 (February 1999), LR 26:511 (March 2000), LR 27:428 (March 2001), LR 28:521 (March 2002), LR 29:372 (March 2003).

Russell R. Gaspard  
Chairman

0303#020

**RULE**

**Department of State  
Office of the Secretary of State**

**Department of State Non-Statutory Fee Schedule  
(LAC 4:I.303)**

In accordance with R.S. 49:222 and R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of State, Office of the Secretary of State has amended the existing Department of State Fee Schedule, which provides for the schedule of fees to be charged for various filings and services by the Department of State. The schedule of fees is amended to ensure that the fees collected are sufficient to cover the cost of carrying out the duties of office associated with the various filings and services for which such fees are charged.

**Title 4**

**ADMINISTRATION**

**Part I. General Provisions**

**Chapter 3. Fees**

**☞ 303. Department of State Non-Statutory Fee Schedule**

A. The Department of State has established the following schedule of fees to be charged for various filings and services by the Department of State.

Item	Cost
Miscellaneous Certificates	\$ 20
Replacement Commission Certificates	15
Certified Copies Amended	25
Copies Amended	25
Powers of Attorney	25
Business Opportunity Agents	15
Name Reservations	25
Trade Name Reservations	25
Partnerships	100
Foreign Partnerships	150
Special Handling	30
Vital Records Certified/Uncertified	10
Limited Liability Companies	75
Appointment of Registered Agent, New Officers or Directors	25
Resignation of Agent, Officer or Director	25
Change of Domicile	25
Change of Address	25
Supplemental Initial Report	25
Microfilm per 35mm reel, shipping included	25
Microfilm per 16mm reel, shipping included	20
Document Certification	15
Pension Applications per 10 pages or any part thereof	10
Military Records per 25 pages or any part thereof	10

Legislative Audio Tape, tape provided by Archives	15
Legislative Audio Tape, tape provided by patron	10
5x7 Photo Reproduction	15
8x10 Photo Reproduction	25

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, LR 12:689 (October 1986), amended LR 29:372 (March 2003).

W. Fox McKeithen  
Secretary of State

0303#013

### RULE

#### Department of Social Services Office of Family Support

Temporary Assistance to Needy Families (TANF)  
Initiatives  
Women and Children's Residential  
Prevention and Treatment Program  
(LAC 67:III.5521)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, has amended §5521, Women and Children's Residential Prevention and Treatment Program.

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature and in an effort to expand the population serviced by this program, the agency has included needy families who have earned income at or below 200 percent of the federal poverty level as eligible for services.

This change was effected by a Declaration of Emergency signed November 8, 2002. Authorization for emergency action in the expenditure of TANF funds is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Family Support

#### Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

#### Chapter 55. TANF Initiatives

#### §5521. Women and Children's Residential Prevention and Treatment Program

A. - B. ...

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), Free or Reduced School Lunch, or effective October 1, 2002, who has earned income at or below 200 percent of the federal poverty level.

D. ...

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, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 29:373 (March 2003).

Gwendolyn P. Hamilton  
Secretary

0303#082

### RULE

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Black Bass  
Daily Take and Size Limits  
(LAC 76:VII.149)

The Wildlife and Fisheries Commission hereby establishes the following Rule on black bass (*Micropterus spp.*) on Poverty Point Reservoir, located north of the town of Delhi in Richland Parish, Louisiana.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 1. Freshwater Sports and Commercial Fishing

#### §149. Black Bass Regulations Daily Take and Size Limits

A. - B. 3. ...

4. Poverty Point Reservoir (Richland Parish)

a. Size limit: 14 inch-17 inch slot. A 14-17 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 14 inches and 17 inches, both measurements inclusive.

b. Daily Take: five fish.

c. Possession Limit:

i. On water: same as daily take.

ii. Off water: twice the daily take.

\*Maximum total length: the distance in a straight line from the tip of the snout to the most posterior point of the depressed caudal fin as measured with the mouth closed on a flat surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 (25)(a), R.S. 56:325(C), R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR:14:364 (June 1988), amended LR 17:278 (March 1991), re-promulgated LR 17:488 (May 1991), amended LR 17:1122 (November 1991), LR 20:796 (July 1994), LR 23:1168 (September 1997), LR 24:505 (March 1998), LR 26:97 (January 2000), LR 28:104 (January 2002), LR 29:373 (March 2003).

Terry D. Denmon.  
Chairman

0303#090

### RULE

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Lease Moratorium  
(LAC 76:VII.500 and 505)

The Wildlife and Fisheries Commission does repeal LAC 76:VII.500 relative to lifting the oyster lease moratorium and to amend and re-enact LAC 76:VII.505 relative to a

moratorium on new oyster leases. Authority for adoption of this Rule is included in R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 5. Oysters**

**§500. Lifting of Oyster Lease Moratorium**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10) and R.S. 56:422.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 17:808 (August 1991), repealed LR 29:374 (March 2003).

**§505. Oyster Lease Moratorium**

A. A moratorium on the issuance of oyster leases for waterbottoms not presently under lease is established. This includes a moratorium on the taking of oyster lease applications for waterbottoms not presently under lease. All pending applications will be held, along with all fees paid, pending a resolution of the moratorium, unless the applicant requests cancellation of the application and refund of fees. In the event of the death of an applicant, the applicant's heirs or legatees should so notify the Department; and any lease ultimately issued shall only issue to persons placed in possession of the application by Judgment of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.

B. A moratorium is placed on the auction of oyster leases in default in payment of rent per LAC 76:VII.501.G, as authorized by R.S. 56:429.

C. Any leases selected by a leaseholder who has previously selected the relocation option pursuant to R.S. 56:432.1 shall be exempt from this moratorium but only to the extent of such previous selection.

D. At such time as the moratorium is lifted, applications for oyster leases will be accepted in accordance with all applicable statutes, rules and regulations and the procedures set out below.

1. One week prior to the date that the moratorium is lifted, the date, time and place where applications are to be taken will be publicly advertised.

2. On the date for taking applications only one applicant at a time will be allowed in the office and this applicant will be allowed to take only one application. Each applicant will have 15 minutes to designate the area he wishes to apply for. After the applicant pays the application and survey fees, he may return to the end of the line for another application.

3. Applications will be taken 24 hours a day (on a first-come basis) until the department feels the influx of applicants can be handled during regular office hours at the New Orleans Office, at which time anyone will be able to take an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:948 (November 1984), amended LR 29:374 (March 2003).

Terry D. Denmon  
Chairman

0303#089

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

#### Termite Bait and Baiting Systems (LAC 7:XXV.117 and 141)

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 minimum specifications for use of termite bait and baiting systems.

The Department of Agriculture and Forestry deems the implementation of these Rules and regulations necessary to provide for uniform minimum treatment specifications for baits and baiting systems. There are several different bait and baiting systems available for use by licensed pest control operators (PCO). These Rules insure that PCO install, monitor and treat structures for subterranean termites to at least a minimum set of requirements. These Rules also allow the department to regulate baits and baiting systems consistently and insure that the state's citizens are getting the services for which they are paying.

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

#### §117. Obligations of the Licensee

A. The licensee must keep the bond and general liability insurance required under §107.D in full force and effect at all times.

B. The licensee must renew the permit for operation for each business location annually prior to June 30.

C. The licensee must apply for a registration certificate for each employee under his supervision within 30 days after the employee is hired and must comply with all other requirements pertaining to registration of employees set forth in §113.

D. The licensee must follow label and labeling requirements in all applications of pesticides not specifically covered in §141.

E. The licensee shall be responsible for training the employee in the kind of work which he will perform.

F.1. The licensee must maintain his commercial applicator certification in current status by:

- a. attending a continuing educational program for recertification approved by the Louisiana Department of Agriculture and Forestry;
- b. recertification at least once every three years;
- c. a minimum of six hours of technical training which shall include but not be limited to the categories of general pest control, termite control, wood destroying insect report (WDIR) inspector and commercial vertebrate control;

d. a minimum of six hours of technical training for the category of fumigation.

2. A licensee attending an approved recertification seminar must attend the entire approved program; otherwise the licensee shall not be recertified at this approved seminar.

3. Time and location for each licensee certification can be obtained by calling or writing to the Louisiana Department of Agriculture and Forestry.

4. A minimum of six hours of technical training for the category of fumigation.

5. A licensee attending an approved recertification seminar must attend the entire approved program, otherwise the licensee shall not be recertified at this approved seminar.

6. Time and location for each licensee certification can be obtained by writing to the Louisiana Department of Agriculture and Forestry.

G. The licensee must be available to provide direct supervision over all employees registered under his license on a regular, ongoing basis.

H. The licensee must report all termite contracts and all wood-destroying insect reports and pay all required fees as set forth in §119 hereof.

I. Any person applying pesticides for a fee and the licensee must maintain records, at the physical address listed on the place of business permit of all applications of pesticides for a period of two years after application on a record keeping form or in a format approved by the director of Pesticide and Environmental Programs of LDAF. The licensee must make a copy of these records available to any employee of the Louisiana Department of Agriculture and Forestry for inspection at a reasonable time during normal working hours.

1. Records for Licensee(s) applications of pesticides for wood destroying insects shall contain the following information:

- a. place of business name, address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;
- e. product\brand name;
- f. EPA registration number;
- g. restricted\general use pesticide;
- h. application date and time;
- i. target pest;
- j. type of application (pre-treat, post, spot);
- k. size of area treated (square feet or linear feet);
- l. mixture concentration;
- m. total amount of emulsion applied;
- n. applicator and certification number.

2. Record keeping for licensee(s) in the general pest and commercial vertebrate phases shall contain the following information:

- a. place of business name address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;

- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated/type of application;
- j. mixture concentration (percent);
- k. applicator and certification number.

3. Records for licensee(s) in the fumigation phase shall contain the following information:

- a. place of business name, address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated;
- j. type of application (ship, structure, commodity);
- k. size of area treated (cubic feet);
- l. rate applied;
- m. total amount of product applied;
- n. applicator, certification number.

4. Records for licensee(s) using Bait and Baiting Systems shall contain the following information:

- a. place of business name, address, and phone number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. physical address of contracted structure;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. linear feet of perimeter of the treated structure(s);
- i. date each monitoring stations installed or inspected;
- j. date each ground bait station installed, inspected or replaced;
- k. date each above ground bait station installed, inspected or replaced;
- l. number of monitoring, ground and above ground bait stations inspected during each inspection;
- m. name and certification\registration number of person inspecting;
- n. inspection diagram.

J. The licensee must renew each category in which he is licensed annually by June 30.

K. The annual fee for licensed pest control operators shall be \$5 for each category in which the pest control operator is licensed.

L. The licensee must report to the Louisiana Department of Agriculture and Forestry all termite contracts, termite perimeter applications and wood destroying insect reports completed each month on the form provided by the Louisiana Department of Agriculture and Forestry. The reports listed above are due in Division of Pesticides and Environmental Programs office in Baton Rouge on or before the tenth of the month following the contract or application.

M. The fee per termite contract and wood-destroying insect report is \$5 per and/or inspection report issued and is due on or before the tenth day of each month.

N. The licensee must have provisions for spill control including materials and tools on every vehicle transporting pesticides.

#### O. Signage of Vehicles

1. General. A motor vehicle being operated by a place of business that is engaged in the transport or application of pesticides must be marked as specified below:

- a. magnetic or removable signs may be used;
- b. size, shape, location and color of marking. The marking must contain the following:
  - i. appear on both sides of the vehicle;
  - ii. be in letters that contrast sharply in color with the background;
  - iii. be readily legible during daylight hours;
  - iv. lettering must be a minimum of two inches in height;
  - v. be kept and maintained in a manner that retains the legibility of the information required by §117.O.1.c;
- c. nature of marking. The marking must display the following information:
  - i. the name or trade name of the place of business operating the vehicle.

P. The only phone numbers that shall be used in any advertisement shall be the place of business permit phone number or the licensee's home phone number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:954 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 29:

### §141. Minimum Specifications for Termite Control Work

A. - I. ...

#### J. Requirements for Baits and Baiting Systems

1. Any licensee or any person working under the supervision of a licensee, who applies baits and/or baiting systems, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system. Manufacturer certification and training programs shall have approval of the agenda prior to the program by the Louisiana Department of Agriculture and Forestry. Manufacturer shall notify LDAF in writing of the licensees and technicians certified.

2. All baits and baiting systems applications shall be contracted and reported according to R.S. 3:3370 and LAC 7:XXV.119.D and pay the fee as described in LAC 7:XXV.119.E.

3. Bait and baiting systems shall be used according to label and labeling.

4. Bait and baiting systems' ground monitoring stations shall be used to detect the presence of subterranean termites in the soil.

5. Ground bait delivery shall begin when the presence of subterranean termites are detected in the monitoring station or if the label allows. Ground bait stations may be used as monitoring stations and inspected as required in LAC 7:XXV.141.J.;

6. Above ground bait stations may be used according to their label and labeling when the presence of subterranean termites are detected in the contracted structure.



7. Ground monitoring and bait stations, used as monitors, shall be inspected monthly, not to exceed 35 days, from the date of installation or last inspection. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

8. When there is termite feeding on any bait and/or monitoring station(s) at the contracted structure; all above ground bait stations and ground monitoring and bait stations shall be inspected monthly, not to exceed 35 days from the date of installation or last inspection and such inspections shall continue until there is no termite feeding on any bait and/or monitoring station, in any station, at the contracted structure for 90 days from the date of installation or last inspection; When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

9. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitoring shall resume at regular intervals, not to exceed 90 days from the date of the last inspection; when termites are detected again, monitoring and/or baiting shall follow the requirements set forth in LAC 7:XXV.141.J.8.

10. Monitoring and ground bait stations shall surround the contracted structure and shall not be more than 20 feet apart, where soil is available unless the label requires stations closer and/or does not allow for "where soil is available."

11. Monitoring and ground bait stations, where soil is available, shall be no further than 20 feet from the slab or pier's outside perimeter except for non-structural wood elements including but not limited to trees, stumps, wood piles, landscape timbers and detached fences.

12. Records of contracts, graphs, monitoring, and bait applications shall be kept according to LAC 7:XXV.117.I.

13. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

14. All monitoring and bait stations shall be removed by the pest control operator from the contracted property within 30 days of the termination of the contract. In the event the bait and baiting system manufacturer stops the use by the pest control operator of their bait and baiting system; all monitoring and bait stations shall be removed by the pest control operator from the contracted property within 90 days of the stop use notification.

15. The commission hereby establishes a pilot program for the use of bait and baiting systems and shall include but not be limited to the following:

a. all baits and baiting systems products shall be subject to the pilot project for a period of a minimum of one year. The Structural Pest Control Commission shall reevaluate the products in the pilot program prior to the end of the first quarter of every calendar year;

b. pilot project bait and baiting system products shall, upon approval of the commission, be listed in the *Louisiana Register*;

c. pilot project bait and baiting system products are subject to all regulations in LAC 7:XXV.141.J;

d. baits and baiting systems may be used as a stand-alone termite treatment only with written approval by LDAF;

e. baits and baiting systems may be used as a supplement to traditional ground termiticide treatments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 29:

#### **Family Impact Statement**

The proposed amendments to LAC 7:XXV.117 and 141 regarding minimum specifications for use of termite bait and baiting systems should not have any known or foreseeable impact on any family as defined by R.S. 49:972 D or on family formation, stability and autonomy. 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 April 25, 2003 at 5825 Florida Blvd., Baton Rouge, LA 70806. A public hearing will be held on these Rules on April 25, 2003 at 9 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: Termite Bait and Baiting**

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

There is no anticipated implementation cost or savings to state or local governmental units. The Department of Agriculture and Forestry deems the implementation of these Rules and regulations necessary to provide for uniform minimum treatment specifications for baits and baiting systems. There are several different bait and baiting systems available for use by licensed pest control operators (PCO). These Rules insure that PCO install, monitor, and treat structures for subterranean termites to at least a minimum set of requirements.

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

There is no anticipated effect on revenue to state or local governmental units.

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

There is no anticipated significant cost to affected persons or non-governmental groups. Most of the PCO's are meeting these requirements. The benefits of these Rules will be to insure that pest control operators (PCO) install, monitor and treat structures for subterranean termites to at least a minimum set of requirements. These Rules also allow the Department to regulate baits and baiting systems consistently and insure that the state's citizens are getting the services for which they are paying.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Skip Rhorer  
Assistant Commissioner  
0303#079

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Economic Development  
Office of Business Development  
Business Resources Division**

**Louisiana Small Business Linked Deposit Loan Program  
(LAC 19:VII.7303 and 7305)**

The Department of Economic Development, Office of Business Development, Business Resources Division, pursuant to the authority of R.S. 51:2312 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend §§7303 and 7305 of the Rules of the Louisiana Small Business Linked Deposit Loan Program. The purpose of the amended Rules is to provide for a floor interest rate to the state of 0.5 percent. Currently the program has no floor and in a low interest environment the state would not receive earnings on the deposits.

**Title 19  
CORPORATIONS AND BUSINESS**

**Part VII. Economic Development Corporation**

**Subpart 7. Louisiana Small Business Linked Deposit  
Loan Program**

**Chapter 73. Procedures for Authorization and  
Administration**

**§7303. General Provisions**

A. The Linked Deposit Program is funded to meet all current and anticipated application needs. The extreme changes in the interest rate environment in recent years have, on occasion, presented the Treasury with a dilemma. Interest earnings on Treasury deposits supporting the Linked Deposit Program have been so low that the rate buy down prescribed below would force the Treasury to accept zero or negative earnings on its money. To preclude such events, a floor of 0.5 percent (0.005) is set as the lowest interest earnings accepted for Treasury funds on deposit under the Linked Deposit Program, as determined by the State Treasury. The buy down described, to the extent that it does not violate this floor, will be awarded on approval of an application.

B. Priority for application approval and funding shall be given as follows:

1. an eligible Louisiana business located in a very high unemployment area which creates one or more jobs shall receive a maximum of a four percent interest rate buy down;

2. an eligible Louisiana business located in a high employment area which creates three or more jobs shall receive a three percent interest rate buy down (less than three jobs shall receive two percent);

3. an eligible Louisiana certified disadvantaged business, disabled owned business, or research recipient of a Small Business Innovative Research Grant, which creates one or more jobs shall receive a maximum of a three percent interest rate buy down;

4. an eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a two percent interest rate buy down;

5. an eligible Louisiana business in a low unemployment area creating one to four jobs shall receive a maximum of a one percent interest rate buy down.

C. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent of the total available for linked deposits, unless otherwise specified by the treasurer.

D. Applications which provide a "but for" statement shall be eligible for a five year term on the linked deposit. All other applications are eligible for two year terms only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

**§7305. Linked Deposit Loan Program Authorization  
Lending Institution Requirements; Applicants  
Requirements and Conditions for Approval**

A. - K. ...

L. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year, coinciding with the annual maturity of the linked Treasury funds, and shall be the allowed percentage below the current competitive borrowing rate applicable to each eligible small business. At each annual maturity, the lender shall adjust the loan rate for the next year to the then competitive rate for that business, considering the usual concerns for loan payment performance and overall risk. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with this Section in the form and manner prescribed by the Treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

M. ...

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### Family Impact Statement

The proposed amendments to Rules 19:VII. Chapter 73 regarding the Louisiana Small Business Linked Deposit Loan Program 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 the 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 Daryl Manning through the close of business on April 21, 2003, at Post Office Box 94185, Baton Rouge, LA 70804-9185, 1051 North Third Street, Baton Rouge, Louisiana 70802. or by email to [manning@lded.state.la.us](mailto:manning@lded.state.la.us).

Don J. Hutchinson  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Louisiana Small Business Linked Deposit Loan Program

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no anticipated costs or savings to the state or local governmental units associated with these changes to the Rules, other than those one-time costs directly associated with the publication of these Rules. These changes will not increase the workload for agency personnel.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections of state or local governmental units associated with this proposed Rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This action will lift the moratorium on the program and will benefit businesses borrowing funds through commercial loans resulting in job creation
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no estimated effect on competing businesses. The program requires an increase in employment to be eligible.

Mike Williams  
Resource Services Director  
0303#084

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### NOTICE OF INTENT

### Economic Development Office of Business Development Business Resources Division

Workforce Development and Training Program  
(LAC 13:III.Chapter 3)

The Department of Economic Development, Office of Business Development, Business Resources Division, Louisiana Economic Development Corporation, pursuant to the authority of R.S. 51:2312 and R.S. 51:2331 and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to amend the Rules for the Workforce Development and Training Program. The Rules are being amended to recognize the state's commitment to Cluster Based Economic Development; to recognize statutory changes made by Acts 2001, No.9; to eliminate the use of Sponsoring Entities in the Workforce Program; to provide that LEDC may cancel funding if the project takes more than a year to get started; to require a business plan, with financial statements and projections, with the application; to provide that the benefit to the state should not take longer than two years to be realized; to eliminate the limit of \$500,000 for a single grant; and to provide for other administrative changes.

### Title 13

### ECONOMIC DEVELOPMENT

### Part III. Financial Assistance Programs

### Chapter 3. Workforce Development and Training Program

### §301. Preamble and Purpose

A. Workforce Development and Training is vital to support the state's commitment to Cluster Based Economic Development, and the state's long-term goals as set forth in Louisiana: Vision 2020, which is the master plan for economic development for the state of Louisiana.

B. The purpose of the program is to enable the development of and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

1. improving the competitiveness and productivity of Louisiana's workforce and business community; and
2. assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### §303. Definitions

**Applicant**Cthe entity or company requesting a training award from LED and LEDC under this program.

**Award**Cfunding approved under this program for eligible training activities.

**Company** the business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

**Contract** a legally enforceable award agreement between DED, the awardee and a sponsoring entity LEDC and the successful applicant-company governing the terms and the conditions of the training award.

**Full Time Permanent Job** can employed position requiring the employee to work a full 40-hour work week, and which is not a temporary position.

**LEDC** the Louisiana Department of Economic Development.

**LEDC** the Louisiana Economic Development Corporation.

**Net Benefit Return to the State** the determination of whether or not the value to the state is equal to or exceeds the amount of the award to the company.

**Percentage of Achieved Performance Objectives as Provided in the Contract** can average of that portion achieved by the company of the full time permanent jobs created or upgraded, and that portion achieved by the company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

**Preference** the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

**Program** the Workforce Development and Training Program.

**Project** the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to maintain or expand its Louisiana operations, to increase its capital investment in Louisiana, or to locate a facility in this state.

**Secretary** the secretary of the Louisiana Department of Economic Development, who is, by law, also the president of the Louisiana Economic Development Corporation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### **§305. General Principles**

A. The following general principles will direct the administration of the Workforce Development and Training Program:

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;

2. training awards are not to be construed as an entitlement for companies located or locating in Louisiana;

3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;

4. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;

5. evaluations for the enhancement of existing Louisiana businesses that are adding locations within the state will be conducted with the same procedures and with the same priority as the recruitment of new businesses to the state;

6. the anticipated economic benefits to the state will be considered as a requirement in making the award;

7. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate;

8. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers; and

9. award funds shall be utilized for the approved training project only.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### **§307. Program Descriptions**

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### **§309. Eligibility**

A. An eligible applicant is an employer that seeks customized training services to provide training in a particular industry.

B. The following types of businesses are ineligible for the award of workforce development funds: Retail Businesses; Trucking Companies; Lodging or Hospitality Enterprises; Assisted Living Enterprises, Retirement Communities, or Nursing Homes; and Gaming or Gambling Enterprises.

C. Employees to be trained must be employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained for projects at Stennis Space Center must be Louisiana residents.

D. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with the Department of Economic Development or LEDC in which the company is in default and/or is not in compliance.

E. Companies must be in full compliance with all state and federal laws.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### **§311. Criteria**

A. General (these apply to all training programs administered under these Rules)

1. Preference may be given to applicants in industries identified by the state as targeted or cluster industries, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 365 days of application approval, the LEDC, upon the recommendation of the secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the contract.

B. Pre-employment, Upgrade and On-the-Job Training

1. Applicants must create at least 10 net new full-time permanent jobs in the state, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 full-time permanent employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### **§313. Application Procedure**

A. LED will provide a standard application form which applicants will use to apply for assistance. The application

form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information LED or LEDC may require.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### **§315. Submission and Review Procedure**

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed, in order to:

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;

2. identify the availability of existing training programs which could be adapted to meet the employer's needs;

3. verify that the business will continue to operate during the period of the contract; and

4. determine if the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The net benefit return to the state shall not exceed two years.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to LEDC; and LEDC will then review and either approve or reject the application.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

### §317. General Award Provisions

#### A. Award Agreement

1. An award agreement or contract will be executed between LEDC and the successful applicant-company. The contract will specify the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation, and the achievement of employee salary levels to be reached by the company.

2. LEDC will disburse funds to the company as provided by the award agreement or contract.

3. LED will oversee the progress of the training and reimburse the company on the basis of cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting information.

4. Funds may be used for training programs extending up to two years in duration.

5. Contracts issued under previous Rules may be amended to reflect current regulations as of the date of the most recent change, upon request of the company, the recommendation of LED, and approval of LEDC.

#### B. Funding

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. travel costs: travel for trainers, training coordinators and trainees;

c. materials and supplies costs: training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and computer based training (CBT) software; and

d. other costs: when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-computer based training (CBT) software, unless owned by a public training provider;

c. out-of-state, publicly supported schools;

d. employee handbooks;

e. scrap produced during training;

f. food, refreshments; and

g. awards.

4. Training activities eligible for funding consist of:

a. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

b. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

#### C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to LED by the company. Funds will not be available for reimbursement until a training agreement or contract between the company and LEDC has been executed. Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, reimbursements can be provided to the company only after final execution of a contract with LEDC.

2. Companies will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

#### D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, companies shall be required to complete and submit to LED cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly Louisiana Department of Labor ES-4 Form filings to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company fails to meet its performance objectives specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the company in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED and on the recommendation of the secretary. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits of the training project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

4. In the event a company knowingly files a false statement in its application or in a progress report, the company may be guilty of the offense of filing false public

records, and may be subject to the penalty provided for in R.S. 14:133.

5. LEDC shall retain the right, for itself, for the Legislative Auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

#### **§319. Contract Monitoring**

A. All monitoring will be done by LED. A portion of the fiscal year's appropriation, up to five percent or a maximum of \$200,000, may be used by LED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:244 (February 1999), LR 25:1665 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

#### **§321. Conflicts of Interest**

A. No member of Louisiana Economic Development Corporation (LEDC), employee thereof, or employee of the Louisiana Department of Economic Development (LED), nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:

#### **Family Impact Statement**

The proposed amendments to Rules 13:III. Chapter 3 regarding the Workforce Development and Training Program 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 the 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 Rule amendments to Daryl Manning through the close of business on April 21, 2003, at P. O. Box 94185, Baton Rouge, LA 70804-9185, by physical delivery to 1051 North Third Street, Baton Rouge, Louisiana 70802, or by email to manning@lded.state.la.us.

Don J. Hutchinson  
Secretary

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

#### **RULE TITLE: Workforce Development and Training Program**

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

There are no anticipated costs or savings to the state or local governmental units associated with these changes to the Rules, other than those one-time costs directly associated with the publication of these Rules. These changes will not increase the workload for agency personnel.

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

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

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

This action may benefit businesses by removing the \$500,000 limit and the requirement that a sponsoring entity must be a part of the contract.

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

There is no estimated effect on competition and employment as a result of the proposed Rule changes.

Mike Williams  
Resource Services Director  
0303#085

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Bulletin 741C Louisiana Handbook for School  
Administrators CBESE Test Security Policy  
and Louisiana Educational Assessment  
Program Erasure Analysis Procedures  
(LAC 28:1.901)

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, Louisiana Handbook for School Administrators, referenced in LAC 28:1.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The BESE Test Security Policy was changed to clarify procedures for security of electronic test data and procedures for erasure analysis. Test scores from the Louisiana Educational Assessment Program are included in school and district accountability. Student level data is now available to

districts and schools electronically through the LDE website. The security of this data is critical. The erasure analysis procedures identify tests that have excessive wrong-to-right erasures indicating a testing irregularity.

## **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 in LR 28:269-271 (February 2002); LR 28:272-273 (February 2002); LR 28:991, 993 (May 2002); LR 28:1187 (June 2002), LR 29:

###### **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 form—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 the 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 material. 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 tests 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 material (e.g., writing projects, 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 witness 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 of 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 material 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 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 be 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 test 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 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, counterfeited, 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, principals, school test coordinators and other authorized users of the LEAP<sup>web</sup> Reporting System and LEAP<sup>data</sup> 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. All users must sign a statement guaranteeing they will not share the password with unauthorized individuals and maintain the confidentiality of student data. A copy of the signed statement should be sent to the District Test Coordinator to be kept on file. Users who have access to these systems and leave their positions at a district or school site must not use or share the password. 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.

#### **Louisiana Educational Assessment Program Erasure Analysis Procedures**

In order to investigate erasures on student answer documents for the multiple-choice portions of the state criterion-referenced and norm-referenced testing programs, the State Board of Elementary and Secondary Education and the State Department of Education have developed the following procedures.

1. The scoring contractor will scan every answer document for wrong-to-right erasures, and the state average and standard deviation will be computed for each subject at each grade level.

2. Students whose wrong-to-right erasures exceed the state average by more than four standard deviations will be identified for further investigation. For each student with excessive erasures, the proportion of wrong-to-right erasures to the total number of erasures will be considered.

3. Based on the criteria for excessive wrong-to-right erasures, the scoring contractor will produce the following reports:

- District/School Erasure Analysis Report (three copies, sorted by district).
- *Student Erasure Analysis Report* for students identified as having excessive wrong-to-right erasures. This report contains student demographic information, an item-by-item analysis of wrong-to-right erasures, and a statement showing that the student exceeded the four-standard-deviation criterion.
- The scoring contractor will maintain answer documents for the students exceeding the four-standard-deviation criterion, sorted by district/school. The answer documents will be available for review upon request.

4. Upon receipt of the *Erasure Analysis Reports*, LDE staff will notify the State Superintendent of Education regarding which schools have been identified.

5. The correspondence from the State Superintendent of Education to the local superintendent will state that students have been identified as having excessive wrong-to-right erasures. Based on the number of erasures found, scores for students exceeding the four-standard-deviation criterion will be voided. The individual student reports from the testing program will reflect the voided scores. In the aggregation of scores at the school, district, and state levels, each voided score will have the effect of a zero score. Included with the correspondence will be the following documentation:

- District/School Erasure Analysis Report
- Student Erasure Analysis Reports

Copies of this correspondence will be provided to the Deputy Superintendent of Education, the Assistant

Superintendent of the Office of Student and School Performance, the Director of the Division of Student Standards and Assessments, and the local District Test Coordinator.

6. When the correspondence is mailed, the local superintendent will be advised to investigate the case of the irregularity and provide a written plan of action to the State Superintendent of Education within 30 calendar days.

7. A roster of schools will be generated where students have been identified with wrong-to-right erasures greater than three standard deviations above the state average, but less than or equal to four standard deviations above the state average of wrong-to-right erasures. These student scores will not be voided; however, the local superintendent will be advised to investigate the case of the irregularity and provide a written plan of action to the State Superintendent of Education within 30 calendar days.

8. A summary report of erasure analysis irregularities will be presented to the Louisiana Educational Assessment Testing Commission and the Board of Elementary and Secondary Education after each LEAP test administration.

\* \* \*

### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule effect the stability of the family? No.
2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule effect the functioning of the family? No.
4. Will the proposed Rule effect family earnings and family budget? No.
5. Will the proposed Rule effect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit comments until 4:30 p.m., May 9, 2003, 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** **BESE Test Security Policy and Louisiana Educational Assessment Program Erasure Analysis Procedures**

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

The only implementation costs are \$320 for publication in the Louisiana Register of the proposed BESE Test Security

Policy. This is an update of the BESE Test Security Policy approved in August 2001. There will not be an increase or reduction in workload or additional paperwork. The BESE Test Security Policy will be available on the LDE website.

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

There is no estimated effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

There is no estimated effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
0303#034

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel  
C Fee Policy for Out-of-Field Authorization to Teach License  
(LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:1.903.A. This policy specifies origin of fee payment for the Out-of-Field Authorization to Teach license. The fee for this license is to be paid by the requesting school district, not by the individual teacher in whose name the license is issued.

#### Title 28

#### EDUCATION

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

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

#### Subchapter A. Bulletins and Regulations

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

#### A. Bulletin 746

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 28:763-765 (April 2002); LR 28:765 (April 2002); LR 28:990, 991 (May 2002); LR 29:

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#### Types of Teaching Authorizations and Certifications Effective July 2002, revised December 2002

<b>Non-Standard Temporary Authorizations to Teach</b>			
<p>Temporary Authority to Teach</p> <p>(A teacher may hold a one-year Temporary Authorization to Teach for a maximum of three years while pursuing a specific certification area. He/she may not be issued another Temporary Certificate at the end of the three years for the same certification unless the Louisiana Department of Education designates the certification area as one that requires extensive hours for completion.)</p>	<p>Districts may recommend that teachers be given one-year temporary authorizations to teach according to the stipulated conditions. Districts must provide a signed affidavit by the local superintendent that "there is no regularly certified, competent, and suitable person available for that position" and that the applicant is the best qualified person for the position.</p>	<b>Conditions</b>	<b>Requirements to Renew Temporary Authorization to Teach and/or Move To Another Certification Level</b>
		a. Individual who graduates from teacher preparation program but does not pass PRAXIS	Teacher must prepare for the PRAXIS and take the necessary examinations at least twice a year.
		b. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who applies for admission to a Practitioner Teacher Program or other alternate program but does not pass the PPST or the content specialty examination of the PRAXIS required for admission to the program.	Teacher must successfully complete a minimum of six credit hours per year in the subject area(s) that they are attempting to pass on the PRAXIS; candidate must reapply for admission to a Practitioner Teacher Program or other alternate program.
		c. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who is hired after the start of the Practitioner Teacher Program	Teacher must apply for admission to a Practitioner Teacher Program or other alternate program and pass the appropriate PRAXIS examinations required for admission to the program.
<p>Practitioner Teacher License</p> <p>One-year license that can be held a maximum of three years, renewable annually.</p>	<p>The District and the alternate certification program provider must identify the individual as a practitioner teacher (PL1), a non-master's alternate certification program teacher (PL2), or a master's alternate certification program teacher (PL3).</p>	<p>Teacher must be admitted to and enrolled in a State-approved Practitioner Teacher Program (PL1), Non-Master's Alternate Certification Program (PL2), or Master's Degree Alternate Certification Program (PL3), which necessitates meeting all program requirements including baccalaureate degree, stipulated GPA, and passing scores on the Praxis PPST and content area exams.</p>	<p>The alternate certification teacher (PL1, PL2, and PL3) must remain enrolled in the respective program and fulfill all coursework, teaching assignments, and prescribed activities as identified by the program provider. Program requirements must be completed within the three-year maximum that the license can be held.</p> <p>PL2 and PL3 teachers must demonstrate progress toward program requirements by successfully completing at least 9 semester hours each year to remain on the PL license.</p>
<p>Out-of-Field Authorization to Teach</p> <p>(A teacher may hold a one-year Out-of-Field Authorization to Teach, renewable annually, for a maximum of three years.</p> <p>If the teacher is actively pursuing certification in the field and LDE designates the certification area as one requiring extensive hours for completion, two additional years of annual renewal may be granted.)</p>	<p>District submits application to LDE; renewable annually for maximum of three years, with fee to be paid by the district.</p> <p>Superintendent of employing district must provide a signed statement that certifies that "there is no regularly certified, competent and suitable person available for the position" and that the applicant is the best-qualified person available for the position.</p>	a. Individual holds a Louisiana teaching certificate, but is teaching outside of the certified area.	<p>Teacher must obtain a prescription/outline of course work required for add-on certification in the area of the teaching assignment. Teacher must successfully complete a minimum of six credit hours per year of courses that lead toward certification in the area in which he/she is teaching; or the secondary-certified teacher who is teaching out-of-field may opt to take and pass the required PRAXIS content specialty examination for the specific 7-12 academic certification area, if the area has been declared as a primary or secondary teaching focus area. The district must support a teacher's efforts in this area.</p>
<p>Temporary Employment Permit</p>	<p>Under condition (a) the district submits application to LDE; renewable annually.</p> <p>Under condition (b) the Individual submits application to LDE; renewable annually.</p>	a. Individual meets all certification requirements, with the exception of passing all portions of the NTE examination, but scores within ten percent of the composite score required for passage of all exams. (Currently classified as EP)	<p>Superintendent and President of the school board to which the individual has applied for employment must submit a signed affidavit to the LDE stipulating that there is no other applicant who has met all of the certification requirements available for employment for a specific teaching position. Such permit shall be in effect for not more than one year, but may be renewed. Such renewal of the permit shall be accomplished in the same manner as the granting of the original permit. The granting of such emergency teaching permit shall not waive the requirement that the person successfully complete the exam.</p> <p>While employed on an emergency teaching permit, employment period does not count toward tenure.</p>

		b. Individual meets all certification requirements, with the exception of passing one of the components of the PRAXIS, but has an aggregate score equal to or above the total required on all tests. (Currently classified as TEP)	Temporary Employment Permits are issued at the request of individuals. All application materials required for issuance of a regular certificate must be submitted to LDE with the application for issuance of a TEP. An individual can be re-issued a permit three times only if evidence is presented that the required test has been retaken within one year from the date the permit was last issued. Beginning with the fifth year, additional documentation must be submitted by the employing district.
<b>Standard Teaching Certifications</b>			
Out of State Certificate	Individual submits application to LDE; valid for three years, non-renewable.	a. A teacher certified in another state who meets all requirements for a Louisiana certificate, except for the PRAXIS examinations. -or- Teacher provides evidence of at least four years of successful teaching experience in another state, completes one year of employment as a teacher in Louisiana public school systems, and secures recommendation of the local superintendent of the employing school system for continued employment.	Teacher must take and pass the appropriate PRAXIS examinations -or- Teacher provides evidence of at least four years of successful teaching experience in another state, completes one year of employment as a teacher in Louisiana public school systems, and secures recommendation of the local superintendent of the employing school system for continued employment.
<b>Professional Level Certificates (effective for all new certificates issued after July 1, 2002)</b>			
Level 1 Professional Certificate (Three-year term)	Teachers must graduate from a State-approved teacher preparation program (traditional or alternative path), pass PRAXIS, and be recommended by a university to receive a Level 1 Professional Certificate. -or- Teacher must complete a State-approved Practitioner Teacher Program, pass PRAXIS, and be recommended by the Practitioner Teacher Program provider to receive a Level 1 Professional Certificate. -or- Teacher must meet the requirements of an out-of-state certified teacher.		A lapsed Level 1 certificate may be extended once for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of resident, extension, or correspondence credit directly related to the area of certification. However, if the holder of the Level 1 certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of 150 hours of professional development.
Level 2 Professional Certificate	Teachers with a Level 1 Professional Certificate must pass the Louisiana Assistance and Assessment Program and teach for three years to receive a Level 2 Professional Certificate.		Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 2 Professional License renewed.
Level 3 Professional Certificate	Teachers with a Level 1 or Level 2 Certificate are eligible for a Level 3 Certificate if they complete a Masters Degree, teach for five years, and pass the Louisiana Assistance and Assessment Program.		Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 3 Professional License renewed.
<b>Standard Teaching Certificates (issued prior to July 1, 2002)</b>			
Type C Certificate	Type C certificates will not be issued after July 1, 2002.		
Type B Certificate	Candidates currently holding Type A or Type B certificates will continue to hold these certificates, which are valid for life, provided the holder does not allow any period of five or more consecutive years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education, acting in accordance with law.		
Type A Certificate			
<b>Process for Renewing Lapsed Professional Certificates</b>			
Type C, B, and A Certificates			
<p>Type B and Type A certificates will lapse for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester (90 consecutive days). Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.</p> <p>A lapsed Type C certificate may be renewed for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of credit directly related to the area(s) of certification. Such credit hours shall be resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. However, if the holder of a Type C certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of the six semester hours of credit as described previously in the paragraph.</p>			
Level 2 and Level 3 Certificates			
<p>Level 2 and Level 3 professional certificates will lapse (a) for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester [90 consecutive days], or (b) if the holder fails to complete the required number of professional development hours during his employ. Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.</p>			

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, 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 746C Louisiana Standards for  
State Certification of School PersonnelC Fee Policy for  
Out-of-Field Authorization to Teach License**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy specifies origin of fee payment for the Out-of-Field Authorization to Teach license.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This policy will have no effect on revenue collections. Regardless of the payer, the fee remains the same.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This policy provides payment by school district rather than by the individual teacher for an Out-of-Field Authorization to Teach license. Individual teachers in whose name this license is issued would save the cost of the license, \$25.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This policy will have no effect on competition and employment

Marlyn J. Langley  
Deputy Superintendent  
0303#032

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Grades 7-12 Certification Primary and Secondary Teaching Focus Areas (LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:1.903.A. This policy revises certification titles for secondary (7-12) primary and secondary teaching focus areas to reflect the update of vocational categories to career and technical categories. This policy also provides an option for a single primary focus of social studies in secondary teacher education undergraduate programs, using the full 50 hours allowed for both the primary and the secondary teaching focus area in other programs. The change of vocational education categories to career and technical categories necessitates a revision in the certification titles used in Louisiana. The single teaching focus for social studies undergraduate programs will allow for the full breadth of knowledge needed, with coursework to be distributed across civics/government, history (world, American, Louisiana), economics, and geography (physical and cultural systems).

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
Subchapter A. Bulletins and Regulations  
§903. Teacher Certification Standards and Regulations  
A. Bulletin 746**

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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, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 28:763-765 (April 2002); LR 28:765 (April 2002); LR 28:990, 991 (May 2002); LR 29:

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**Primary and Secondary Teaching (Focus) Areas  
for Grades 7-12 Certification**

Within the new certification structure that has been approved by the State Board of Elementary and Secondary Education, every secondary teacher in Louisiana must have a primary and a secondary focus area. The following areas are approved primary focus areas, to include a minimum of 31 semester hours of credit:

Agriculture; Business; Computer Science; Marketing; English; French; Spanish; Latin; German; Family and Consumer Sciences; Technology Education; Mathematics; General Science; Biology; Chemistry; Earth Science; Physics; Environmental Science; Speech; and Social Studies.

The following areas are approved secondary focus areas, to include a minimum of 19 semester hours of credit:

Business; Computer Science; Marketing; English; French; Spanish; Latin; German; Journalism; Mathematics; Biology; Chemistry; Earth Science; Physics; Environmental Science; Speech; and Social Studies.

**Primary and Secondary Teaching (Focus) Areas for Grades 7-12 Certification**

Certification Area	Primary 31 Hours	Secondary 19 Hours	Comment
Agriculture	?		
Business	?	?	
Computer Science	?	?	
Marketing	?	?	
English	?	?	
Foreign Languages			
French	?	?	
Spanish	?	?	
Latin	?	?	
German	?	?	
Family & Consumer Sciences	?		
Technology Education	?		
Journalism		?	
Mathematics	?	?	
Science			If a candidate pursues General Science as a primary teaching area, then the specific science area hours (e.g., Biology, Chemistry, etc.) would also apply to the required secondary focus hours in that specific field.
General Science	?		
Biology	?	?	
Chemistry	?	?	
Earth Science	?	?	
Physics	?	?	
Environmental Science	?	?	
Speech	?	?	
Social Studies*	?	?	
<p>Note: If a university determines that hours beyond the required hours are needed for a specific primary (31) or secondary (19) teaching area, then the university may use portions of the flexible hours within the 124 total hours to address that need.</p> <p>*Institutions of higher education may opt to design social studies teacher preparation programs with only a primary teaching focus area, dedicating the entire 50 semester hours of content specialty preparation to coursework in civics/government, history (world, American, Louisiana), economics, and geography (physical and cultural systems).</p>			

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**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption,

repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, 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 746C Louisiana Standards for State Certification of School Personnel Grades 7-12 Certification Primary and Secondary Teaching Focus Areas**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy revises certification titles for secondary (7-12) primary and secondary teaching focus areas to reflect the update of vocational categories to career and technical categories. This policy also provides an option for a single primary focus of social studies in secondary teacher education undergraduate programs, using the full 50 hours allowed for both the primary and the secondary teaching focus area in other programs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

This policy will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 

This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
0303#031

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746C Louisiana Standards for State Certification of School PersonnelC Non-Master's Certification-Only Alternate Program (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy revises the Non-Master's/Certification-Only Program description to include student teaching as an option to internship, to include program prescription as an option to individualized prescription, and to extend the implementation date for this program to Summer Semester 2003. This policy provides options to expand the possibilities for alternate certification candidates and for the providers who will offer approved programs. It also extends the implementation deadline for this program by one semester.

**Title 28  
EDUCATION**

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

**Subchapter A. Bulletins and Regulations**

**§903. Teacher Certification Standards and Regulations**

A. Bulletin 746

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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, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:763-765 (April 2002), LR 28:765 (April 2002), LR 28:990-991 (May 2002), LR 29:

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**Non-Masters/Certification-Only Program  
Alternative Path to Certification**

**Adopted December 2002**

This program is designed to serve those candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program. The program may also be accessible in some areas of the state in which the other alternate certification programs are not available. A college or university may offer this program only in those certification areas in which that institution has a state-approved teacher education program. Non-Master's/ Certification-Only Programs may offer certification in PK-3, 1-6, 4-8, 7-12, or Mild-Moderate Special Education.

**Admission to the Program**

To be admitted, individuals should:

1. possess a baccalaureate degree from a regionally accredited university;
2. have a 2.2 GPA, or higher, on undergraduate coursework. (An overall 2.5 GPA is required for certification. Those candidates with a GPA lower than 2.5

may have to take additional courses in the program to achieve a 2.5 GPA.);

3. pass the PRAXIS Pre-Professional Skills Test (PPST); and

4. pass the PRAXIS content-specific subject area examination:

a. Candidates for PK-3 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty exam;

b. Candidates for Grades 1-6 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty exam;

c. Candidates for Grades 4-8 (regular and special education): pass the Middle School Education: Content Knowledge (#0146) specialty exam;

d. Candidates for Grades 7-12 (regular and special education): pass the content specialty examination(s) (e.g. English, Mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach.

**Program Requirements**

This program will provide the same rigor as other certification routes provided by aligning with such empirically-based standards as National Council for the Accreditation of Teacher Education (NCATE), Interstate New Teacher Assessment and Support Consortium (INTASC), Louisiana Components of Effective Teaching (LCET), and the Louisiana Content Standards. This program will also emphasize collaboration between the university and the school districts in order to share and exchange strategies, techniques, and methodologies; and integrate field-based experiences into the curriculum.

**Program Structure**

1. Knowledge of Learner and the Learning Environment* Grades PK-3, 1-6, 4-8, and 7-12:	12 hours
Child/adolescent development/psychology, the diverse learner, classroom management/organization/environment, assessment, instructional design, and reading/instructional strategies that are content- and level-appropriate.	
Mild/Moderate Special Education 1-12:	
Special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, vocational and transition services for students with disabilities.	
*All courses for regular and special education will integrate effective teaching components, content standards, technology, reading, and portfolio development. Field-based experiences will be embedded in each course.	
2. Methodology and Teaching	6 hours
Methods courses to include case studies and field experiences	
3. Internship or Student Teaching	6 hours
Will include methodology seminars that are participant-oriented	
4. Prescriptive Plan	
The prescriptive plan can be pre-planned courses for individual programs or individualized courses for the candidate who demonstrates areas of need, not to exceed 9 semester hours.	
Total	24-33 hours

**Certification Requirements**

Colleges or universities will submit signed statements to the Louisiana Department of Education that indicate the student completing the Non-Master's/Certification-Only alternative certification path met the following requirements.

1. Passed the PPST components of the PRAXIS. (Note: This test was required for admission.)
2. Completed all coursework (including the certification program) with an overall 2.5 or higher GPA.



3. Passed the specialty examination (PRAXIS) for the area(s) of certification.

a. Grades PK-3: Elementary Education: Content Knowledge specialty exam (Note: This test was required for admission.)

b. Grades 1-6: Elementary Education: Content Knowledge specialty examination (Note: This test was required for admission.)

c. Grades 4-8: Middle School Education: Content Knowledge specialty examination (Note: This test was required for admission.)

d. Grades 7-12: Specialty content test in areas to be certified. (Note: This test or 31 semester hours of coursework specific to the content area was required for admission.)

e. Mild/Moderate Special Education 1-12: *Special Education*

4. Passed the Principles of Learning and Teaching examination (PRAXIS)

a. Grades PK-3: Principles of Learning and Teaching K-6

b. Grades 1-6: Principles of Learning and Teaching K-6

c. Grades 4-8: Principles of Learning and Teaching 5-9

d. Grades 7-12: Principles of Learning and Teaching 7-12

Universities offering the Non-Master's/Certification-Only alternative certification option are required to begin implementation of the newly adopted paths during or before Summer 2003.

No students should be accepted into the "old" post-baccalaureate alternate certification program after Spring Semester 2003. Candidates already in the "old" alternative certification program would be given until August 2006 to complete their programs.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Weegie Peabody  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Non-Master's Certification-Only Alternate Program**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy revises the Non-Master's/Certification-Only Program description to include student teaching as an option to internship, to include program prescription as an option to individualized prescription, and to extend the implementation date for this program to Summer Semester 2003.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0303#030

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 746C Louisiana Standards for State Certification of School Personnel  
Policy for Allowing the State to Act as a Private Provider for Alternate Certification  
(LAC 28:I:903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy sets conditions under which the Teacher Certification and Higher Education section of the Division of Teacher Standards, Assessment and Certification of the Louisiana Department of Education may act as a private provider for alternate certification of teacher education candidates. By providing options for individuals who meet the stated criteria, the state would provide timely solutions to problems that impede candidates' completion of alternate programs, thus facilitating the certification efforts of those candidates.

**Title 28  
EDUCATION**

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

**§903. Teacher Certification Standards and Regulations**

A. Bulletin 746

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:763, 765 (April 2002), LR 28:765 (April 2002), LR 28:990, 991 (May 2002), LR 29:

\* \* \*

**Policy for the State to Act as a Private Provider in  
Offering Alternate Certification Opportunities**

The Teacher Certification and Higher Education section, Division of Teacher Standards, Assessment and Certification, Louisiana Department of Education, may act as a private alternate certification program provider in directing certification efforts of candidates who meet the following criteria:

1. have no more than six semester hours of coursework remaining in an approved alternate certification program;

2. have accumulated three years of successful experience in the area of certification, which can be used to waive the student teaching or internship segment of the program; and

3. have experienced difficulty in completing requirements of the alternate program, through no fault of their own.

**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, 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: Policy for Allowing the State to Act  
as a Private Provider for Alternate Certification**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy sets conditions under which the Teacher Certification and Higher Education section of the Division of Teacher Standards, Assessment and Certification of the Louisiana Department of Education may act as a private provider for alternate certification of teacher education candidates. By providing options for individuals who meet the stated criteria, the state would provide timely solutions to problems that impede candidates' completion of alternate programs, thus facilitating the certification efforts of those candidates.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0303#029

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746C Louisiana Standards for State  
Certification of School PersonnelC Policy for  
Teacher Education Program Private Providers  
(LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel, referenced in LAC 28:I.903.A. This policy specifies the three ways that a certified teacher can add a certification endorsement in a declared teaching focus area for Grades 4-8 and Grades 7-12. Add-on certification in academic areas

identified as a teaching focus in grades 4-8 or in grades 7-12 can be granted through either (1) earning a passing score on the identified Praxis content specialty area exam, or (2) successfully completing 31 semester hours in the specific academic area, or (3) earning a pure master's degree in a content area. Under the new certification structure, endorsements could be earned with 19 content hours, but this must be changed to reflect the 31 semester hours identified as an academic major by the Board of Regents.

**Title 28  
EDUCATION**

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

**§903. Teacher Certification Standards and Regulations**

**A. Bulletin 746**

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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, 311, 399, 435, 541 (April, July, September, October, December 1975); amended LR 28:763-765 (April 2002); LR 28:765 (April 2002); LR 28:990, 991 (May 2002); LR 29:

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**Add-On Certification Policy Academic Teaching Focus Areas Grades 4-8 And 7-12**

A teacher must currently hold a standard teaching certificate in order to add an endorsement for a certification area.

Add-on certification in academic areas that have been identified as a teaching focus in grades 4-8 or in grades 7-12 can be granted through either (1) earning a passing score on the identified content specialty area exam of the PRAXIS, or (2) successfully completing 31 semester hours in the specific academic area, or (3) earning a pure Master's Degree in a content area.

Add-on certification in academic areas through the PRAXIS exams would be available only in those Grades 4-8 and Grades 7-12 academic certification areas for which a content specialty exam has been validated in Louisiana and for which a passing score has been established.

**Primary and Secondary Teaching (Focus) Areas for Grades 7-12 Certification**

Certification Area	Primary 31 Hours	Secondary 19 Hours	Comment
Agriculture - Vocational	?		
Business Education	?	?	
Computer Science	?	?	
Distributive Education	?	?	
English	?	?	
Foreign Languages			
French	?	?	
Spanish	?	?	
Latin	?	?	
German	?	?	
Family & Consumer Sciences	?		
Industrial Arts	?		
Journalism		?	
Mathematics	?	?	

Science			If a candidate pursues General Science as a primary teaching area, then the specific science area hours (e.g., Biology, Chemistry, etc.) would also apply to the required secondary focus hours in that specific field.
General Science	?		
Biology	?	?	
Chemistry	?	?	
Earth Science	?	?	
Physics	?	?	
Environmental Science	?	?	
Speech	?	?	
Social Studies	?	?	
Note: If a university determines that hours beyond the required hours are needed for a specific primary (31) or secondary (19) teaching area, then the university may use portions of the flexible hours within the 124 total hours to address that need.			

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**Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, 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 746C Louisiana Standards for State Certification of School Personnel Policy for Teacher Education Program Private Providers**

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy specifies the three ways that a certified teacher can add a certification endorsement in a declared teaching focus area for Grades 4-8 and Grades 7-12.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
0303#033

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746C Louisiana Standards for State Certification of School Personnel Policy for Teacher Education Program Private Providers (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy revises the "Part I, Application for Certificates, Louisiana Applicants" and "Part II, New Certification Structure, Recommended Changes" sections of Bulletin 746 to include non-institutional providers for the Practitioner Teacher Program and to include the State, acting as a private provider. This policy provides options for approved non-institutional, or private, providers to offer the Practitioner Teacher Program alternate route to certification. It also specifies that the state may act as a private provider under conditions approved by the Board of Elementary and Secondary Education.

**Title 28  
EDUCATION**

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

**§903. Teacher Certification Standards and Regulations**

**A. Bulletin 746**

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:763-765 (April 2002), LR 28:765 (April 2002), LR 28:990-991 (May 2002), LR 29:

\* \* \*

**Application for Certificates  
Louisiana Applicants**

An applicant, in order to be eligible for initial certification, shall do his work in teacher education programs approved by the State Board of Elementary and Secondary Education for the education of teachers. Therefore, institutions\* engaged in the preparation of teachers are to provide recommendations for certification of their students. Other institutional\* provider services shall include the following:

1. initial processing of the certificate application;
2. processing an official transcript;
3. providing an original NTE/PRAXIS score report, if score has not been electronically transmitted to the State Department of Education by Educational Testing Service;
4. submitting a Professional Conduct Form; and
5. transmitting the application packet and official transcript to the Office of Teacher Certification and Higher Education in the State Department of Education.

The application shall include the following:

1. the signature of the dean of education, or the head of the unit that administers the approved teacher education curriculum, certifying that the applicant has graduated from or has completed an approved curriculum in teacher education. For an undergraduate secondary teacher education program, the application for certification must also bear the signature of the dean or head of the unit offering each of the certification area subjects in an institution of higher education;

2. the signature of the registrar certifying that the applicant has attained a scholastic standing that is acceptable for graduation from the institution. The transcript on which a certificate is based becomes the property of the state and must be kept in the files of the State Department of Education. No certificate for teaching in Louisiana may be issued to any person whose license has been revoked in any other state.

The issuance of regular certificates authorizing the holder to teach in the elementary and secondary schools of Louisiana is based upon the completion of an approved teacher education program for the type of certification sought. One expecting to be certified as a teacher should attend a college or university\* with an approved program.

Colleges and universities\* may recommend for certification only those who have completed all requirements of an approved teacher education program at the institution.

\*For the Practitioner Teacher alternate teacher certification program only, private providers approved by the state may offer a program leading to the certification of teachers.

\*The state may act as a private provider under conditions approved by the Board of Elementary and Secondary Education.

**New Certification Structure  
Recommended Changes  
Mandatory July 2002**

The universities\* must recommend that teachers be issued Level 1 Teaching Certificates when they have met state certification requirements. The universities\* will be held accountable for the success of the teachers that they recommend for certification.

This would eliminate the need for the Louisiana Department of Education to count hours on transcripts and

allow the department to become more involved in providing support to universities\* to improve the quality of teacher preparation programs. (Note: The Louisiana Department of Education would still continue to review transcripts and issue certificates to out-of-state teachers.)

This change in the certification structure will allow teachers to develop more content knowledge in the grade levels in which they are expected to teach and provide them with more flexible hours to add special education and other grade levels to their certification areas. This would allow new teachers to be certified in one or two areas when completing a 124-credit-hour undergraduate degree program.

All new teachers will be required to receive mentoring during the first year of the Louisiana Teacher Assistance and Assessment Program. New teachers will undergo the assessment during the second year.

All teachers will be required to pass teacher assessment and teach for a total of three years before being issued a Level 2 teaching certificate.

All teachers holding Level 2 and Level 3 certificates will be required to undergo a predetermined amount of professional development during a five-year time period in order to have their teaching certificates renewed for five years. The Blue Ribbon Commission on Teacher Quality will develop the details for the professional development system during the 2000-2002 school years.

\*For the Practitioner Teacher alternate teacher certification program only, private providers approved by the state may offer a program leading to the certification of teachers.

\*The state may act as a private provider under conditions approved by the Board of Elementary and Secondary Education.

\* \* \*

#### Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, 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: Policy for Teacher Education Program Private Providers

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

The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy. This policy revises the "Part I, Application for Certificates, Louisiana Applicants" and "Part II, New Certification Structure, Recommended Changes" sections of Bulletin 746 to include non-institutional providers for the Practitioner Teacher Program and to include the state, acting as a private provider.

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

This policy will have no effect on revenue collections.

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

Economic benefits would accrue to approved private providers of the Practitioner Teacher Program in the form of tuition received from participants.

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

This policy will have no effect on competition and employment.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0303#042

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 1573C Complaint Management Procedures  
(LAC 28:LXI.Chapters 1-5)

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 1573, *Complaint Management Procedures*, LAC 28:LXI. The proposed codification of Bulletin 1573, *Complaint Management Procedures*, R.S. 17:1941 et seq., will not change the regulations previously adopted by the Board of Elementary and Secondary Education. The change will simply render the rules and regulations into code in accordance with Louisiana law. The proposed codification of existing Rules is required to have the rules and regulations incorporated into Louisiana Code.

### Title 28

### EDUCATION

### Part LXI. Bulletin 1573-Complaint Management Procedures

### Chapter 1. Terms, Purpose and Mandates

#### §101. Definitions

A. As used in this Chapter, the following words and phrases have the meaning ascribed to them in this Subsection unless a different meaning is plainly required by the context.

**BESE** the State Board of Elementary and Secondary Education.

**Bulletin 1706C** *Regulations for Implementation of the Children with Exceptionalities Act* Louisiana's Law for Children with Exceptionalities.

**Child Advocate** Can individual or group established to promote the interests and rights of children, especially children with exceptionalities.

**Child with an Exceptionality** Ca child evaluated in accordance with state regulations who is determined to be gifted, talented, emotionally disturbed, learning disabled, hard of hearing, deaf, deaf-blind, speech impaired, severe language disordered, autistic, visually impaired, multi-disabled, orthopedically disabled, traumatic brain injured, or other health impaired.

**Complainant** the individual(s) or organization that files a complaint with the State Department of Education on behalf of a child with an exceptionality. This complainant may be a parent, guardian, student, surrogate parent, child advocate or other individual or an organization.

**Complaint** Can allegation that an educational agency has violated a requirement of federal or state laws and regulations, policies, rights, procedural safeguards or program standards adopted by the BESE.

**DSPC** Division of Special Populations.

**Local Educational Agency (LEA)** Ca public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for such combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary or secondary schools including an educational service agency or other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public charter school that is established as an LEA under the state law.

**State Department of Education (SDE)** the State Department of Education or other agency or officer primarily responsible for the state supervision of public elementary and secondary schools; or, if there is no such officer or agency, an officer or agency designated by the Governor or by state law [Referred to in the Individuals with Disabilities Education Act (ACT) as State Educational Agency (SEA)].

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **§103. Purpose and Mandates**

A. The purpose of the Complaint Management System is to meet the mandates of federal and state laws and regulations that require a mechanism to field, investigate and resolve issues regarding the provision of special education and related services to children with exceptionalities or those children suspected of having exceptionalities.

#### **B. Federal Mandates**

1. 20 U.S.C. Chapter 33 Subchapter 1C General Provisions [Public Law 105-17, Individuals with Disabilities Education Act (IDEA)]

a. Section 1412 (a) (11): "State Educational Agency Responsible for General Supervision." In general the state educational agency is responsible for ensuring that:

i. the requirements of this part are met; and

ii. all educational programs for children with disabilities in the state, including all such programs administered by any other state or local agency:

(a). are under the general supervision of individuals in the state who are responsible for educational programs for children with disabilities; and

(b). meet the educational standards of the State Educational Agency.

b. Limitation. Subparagraph a above shall not limit the responsibility of agencies in the state other than the State Educational Agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the state.

c. Exception. Notwithstanding Subparagraphs a and b, the governor (or another individual pursuant to state law), consistent with state law, may assign to any public agency in the state the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

2. *Individuals with Disabilities Education Act (IDEA) Section 1415 (b)(6)*. The procedures required by this Section shall include an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to such child.

3. 34 Code of Federal Regulations (CFR) Section 300.660-662

#### **C. State Mandates**

1. The division of special populations shall have the following powers and duties:

a. to receive and investigate complaints, to initiate its own investigations, and to conduct mediations and hearings with power of subpoena, on behalf of an individual child or group of children, regarding failure to comply with federal or state laws for children with exceptionalities;

b. to investigate and conduct hearings upon evidence of denial of equal educational opportunities of children with exceptionalities as defined in this Chapter and to take such action as may be necessary to correct the situation;

c. to investigate and conduct hearings upon evidence regarding failure to comply with federal or state laws and rules and regulations and to take such action as may be necessary to correct the situation.

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **Chapter 3. General Provisions**

#### **§301. Adoption of State Complaint Procedures**

A. Each SEA shall adopt written procedures for:

1. resolution of any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of 34 CFR §300.662 by:

a. providing for the filing of a complaint with the SEA; and

b. at the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

2. widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state's procedures under §§ 300.660-300.662.

**B. Remedies for Denial of Appropriate Services**

1. In resolving a complaint where a failure to provide appropriate services is found, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:

a. how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child;

b. appropriate future provision of services for all children with disabilities.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§303. Minimum State Complaint Procedures**

A. Time Limit; Minimum Procedures. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.660(a) to:

1. carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

2. give the complainant the opportunity to submit additional information, either orally or in writing about the allegations in the complaint;

3. review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this Part; and

4. issue a written decision to the complainant that addresses each allegation in the complaint and contains:

- a. findings of fact and conclusions; and
- b. the reasons for the SEA's final decision.

B. Time Extension; Final Decision; Implementation. The SEA's procedures described in Subsection A of this Section also must:

1. permit an extension of the time limit under Subclause (a) of this Section only if exceptional circumstances exist with respect to a particular complaint; and

2. include procedures for effective implementation of the SEA's final decision, if needed, including:

- a. technical assistance activities;
- b. negotiations; and
- c. corrective actions to achieve compliance.

C. Complaints and Due Process Hearings Filed under This Section.

1. If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.520-300.528, or contains multiple issues, of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the

due process action must be resolved using the time limit and procedures described in Subclause (a) and (b) of this Section.

2. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

a. the hearing decision is binding; and

b. the SEA must inform the complainant to that effect.

3. A complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§305. Filing a Complaint**

A. Complaints may be filed by parents, students, child advocates, surrogate parents, other individuals or organizations.

B. Complaints may be filed in writing, by telephone call or in person.

C. The complaint must include:

1. a statement that a public agency has violated a requirement of Part B of the Act or of this Part;

2. the facts on which the statement is based;

3. grievances that do not meet SDE complaint criteria are referred back to the complainants with recommendations for appropriate action to be taken.

D. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under §300.660(a).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**§307. Complaint Criteria**

A. Complaints that will be considered for review and investigation are grievances which:

1. allege that a local educational agency (LEA) which provides or is required to provide publicly funded special education is violating federal and/or state laws, regulations, policies, rights, procedural safeguards or program standards adopted by the BESE and administered by the SDE to assure FAPE to children with exceptionalities or children suspected of having exceptionalities;

2. relate to the provision of special education and related services to children with exceptionalities or suspected of having exceptionalities.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

**Chapter 5. Complaint Intake and Investigative Procedures**

**§501. Filing Complaints**

A. Complaints may be filed by parents, students, child advocates, surrogate parents, other individuals or organizations. Complaints may be filed in writing, by

telephone call or in person. A complaint must include not only a statement that a local educational agency (LEA) has violated a requirement of federal/state law or regulation but also the facts upon which the statement has been based.

B. Grievances that do not meet SDE complaint criteria are referred back to the complainants with recommendations for appropriate action to be taken.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **§503. Treatment of Complaints**

A. Upon receipt, the complaint is reviewed; the issues, rules and statutes that may have been violated are identified; and the investigatory procedure is determined. An investigation may consist of telephone contact, requests for submission of written documents, and/or an on-site investigation.

B. Complaints may be resolved by telephone call(s) or other alternative methods such as negotiation, mediation, conciliation, facilitation, and arbitration.

C. The attempt to resolve a dispute through the complaint management procedures does not preclude a person's right to a due process hearing. These processes are mutually exclusive. Complaint procedures may not be used to delay a person's right to a due process hearing.

D. All complaints must be resolved within 60 calendar days of receipt unless an extension is granted. Request for extensions may be made by the complainant, the local educational agency (LEA), or the SDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **§505. Complaint Intake Procedures Log (SCL)**

A. When a complaint is received and accepted by the SDE, the complaint is recorded in the SDE Complaint (SCL).

B. A Complaint Record Form (CRF) is completed; contacts with the complainant are made as the investigation proceeds and are recorded on the complaint record form. The complainant has the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. This information is documented on the CRF with all other information pertinent to the investigation.

C. The complainant is sent a letter within five business days of intake, indicating receipt of the complaint, stating the SDE representative handling the complaint and the intent to investigate and report findings within 60 calendar days.

D. The local educational agency (LEA) is sent a letter within five business days of intake indicating receipt of the complaint, a statement of the issues involved, including the applicable statute and rule citation(s), the name of the SDE representative handling the complaint, and the timeline by which the LEA must respond to the complaint.

E. The response from the local educational agency (LEA) should include either documentation to prove that the alleged violation did not take place or a plan of action to correct the violation.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **§507. Investigation Procedures**

A. Investigations may include written communication, telephone call(s) and/or on-site visits. During the course of an investigation, technical assistance consultations are provided, when appropriate, and the complainant is given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

B. If it is determined that an on-site investigation is necessary, an on-site investigation will be scheduled and conducted with technical assistance provided as necessary. Notice will be provided to the school system prior to the on-site investigation.

C. In determining whether a complaint requires an on-site investigation, the complaint investigator will consider, but not be limited to, the following conditions:

1. whether there is a disagreement between the parties as to the presence or absence of a certain program, service, personnel or physical entity that cannot be verified by written documentation or telephone conversation.

2. whether the written documentation requested and/or subsequent communication proves to be inconclusive in documenting the facts pertinent to the complaint.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **§509. Report of Findings**

A. The SDE reviews all relevant information and makes an independent determination as to whether the local educational agency (LEA) has violated any federal or state law(s), rule(s) or standard(s).

B. A written report of findings is sent to the local educational agency (LEA) and the complainant. The report includes a statement of the complaint, the applicable statutes and rules, findings of fact, conclusions, technical assistance activities and corrective actions to achieve compliance.

C. If corrective action is necessary, the local educational agency (LEA) must submit in writing to the SDE, according to timelines indicated by the SDE, a plan that includes the specific steps, material, personnel, and timelines required to resolve the complaint.

D. This corrective action plan (CAP) is approved and monitored by the SDE with an on-site monitoring review conducted when necessary.

E. When all appropriate documentation has been received by the SDE, the local educational agency (LEA) is sent written notification of complaint closure.

F. The complaint is closed within a 60 calendar day period.

G. The SDE closes the complaint in the SDE complaint log and files the complaint record with all appropriate documentation.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **§511. Extension of Timelines**

A. Timelines may be extended only if exceptional circumstances exist with respect to a particular complaint. The complainant and the local educational agency (LEA) will be notified in writing of the need for an extension. Reasons for extensions may include, but are not limited to, circumstances such as listed below.



1. The local educational agency (LEA) is unable to submit documentation within specified timelines because of school closing (i.e., vacation, holidays, natural disasters, school strike, malfunction in the school plant, etc.).

2. The local educational agency (LEA) or parents are unable to respond to the report within the specific timelines because of illness, death, or other extenuating circumstances.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **§513. Enforcement Procedures**

A. Sixty calendar days after the filing of a complaint and the subsequent failure of the local education agency (LEA) to implement the corrective action plan as determined by the SDE, the Division of Special Populations may, barring an appeal of the findings by the affected LEA, recommend to the State Superintendent that a petition to withhold the LEA's funds be made to the BESE.

B. In resolving a complaint in which it has found a failure to provide appropriate services, the SDE, pursuant to its general supervisory authority, must address:

1. how to remediate the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and

2. appropriate future provision of services for all children with disabilities.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:

### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? This item is not applicable.

Interested persons may submit written comments until 4:30 p.m., May 9, 2003, 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 1573C Complaint**

#### **Management Procedures**

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

There are no estimated implementation costs or savings to state or local governmental units resulting from the proposed codification of existing Rules.

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

There is no estimated impact on revenue collections of state or local governmental units as a result of the codification of these existing Rules. There will be an estimated increase in federal special education revenue for fiscal year 2002-2003; however, this increase in federal special education revenue is not due to nor affected by the proposed codification of existing Rules.

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

The proposed codification of existing Rules will not change the responsibilities of the state education agency and local education agencies in the provision of educational programs and related services to children with disabilities. The regulatory Rules and responsibilities, promulgated by *R. S. 17:1941, The Children With Exceptionalities Act*, will not be affected.

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

There is no estimated effect on competition and employment resulting from the proposed codification of existing Rules.

Marlyn J. Langley  
Deputy Superintendent  
Management and Finance  
0303#041

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Scholarship/Grant Programs  
(LAC 28:IV.301, 701, 805, 1703, and 1705)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

### **Title 28**

#### **EDUCATION**

#### **Part IV. Student Financial AssistanceC Higher Education Scholarship and Grant Programs**

#### **Chapter 3. Definitions**

#### **§301. Definitions**

\* \* \*

*Program Year (Non-Academic Program)C*the schedule of semesters or terms during a year leading to a vocational or technical education certificate or diploma or a non-academic undergraduate degree for such programs offered by eligible

colleges and universities, beginning with the fall semester or term, including the winter term, if applicable, and concluding with the spring semester or term or the equivalent schedule at an institution which operates on units other than semesters or terms. Enrollment in a summer term, semester or session is not required to maintain eligibility for an award.

*Qualified Summer Session* Those summer sessions for which the student's institution certifies that:

1. the summer session is required in the student's degree program for graduation and the student enrolled for at least the minimum number of hours required for the degree program for the session; or

2. the student can complete his program's graduation requirements in the summer session; or

3. the course(s) taken during the summer session is required for graduation in the program in which the student is enrolled and is only offered during the summer session; or

4. the course(s) taken during the summer session is in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2331 (November 2002), LR 29:

## **Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards**

### **§701. General Provisions**

A. - E.1. ...

2. The TOPS Performance Award provides a \$400 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by LSA-R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

3. The TOPS Honors Award provides an \$800 annual stipend, prorated by two semesters, three quarters, or equivalent units in each academic year (college) and each program year (non-academic program), in addition to an amount equal to tuition for full-time attendance at an eligible college or university, for a period not to exceed eight semesters, including qualified summer sessions, twelve quarters, including qualified summer sessions, or an

equivalent number of units in an eligible institution which operates on a schedule based on units other than semesters or quarters, except as provided by LSA-R.S. 17:3048.1.H, or §503.D or §509.C. The stipend will be paid for each qualified summer session, semester, quarter, term, or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

4. - 5.a. ...

b. In a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree receive an amount equal to the average award amount (TOPS-Tech), as defined in §301, plus any applicable stipend, prorated by two semesters, three quarters, or equivalent units in each program year (non-academic program). The stipend will be paid for each qualified summer session, semester, quarter, term or equivalent unit for which tuition is paid. Attending a qualified summer session for which tuition is paid will count toward the eight semester limit for TOPS.

E.6. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25: 256 (February 1999) LR 26:67 (January 2000), LR 26:1262 (June 2000), LR 26: 1995, 2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:

## **Chapter 8. TOPS-TECH Award**

### **§805. Maintaining Eligibility**

A. - A.4. ...

5. continue to enroll and accept the TECH award as a full-time student in an eligible college or university defined in §301, and maintain an enrolled status throughout the program year (non-academic program), unless granted an exception for cause by LASFAC; and

A.6. - B. ...

AUTHORITY NOTE: Promulgated in accordance with RS. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), LR 27:1856 (November 2001), LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:

## **Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools**

### **§1703. High School's Certification of Student Achievement**

A. Responsibility for Reporting and Certifying Student Performance

1. Through the 2002 academic year (high school), responsibility for the identification and certification of high school graduates who meet the academic qualifications for a TOPS award is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

2. Commencing with the 2003 academic year (high school), responsibility for the submission and certification of courses attempted and the grades earned for high school graduates is as follows:

a. the principal or the principal's designee for public high schools;

b. the principal or headmaster or designee of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster or designee of an eligible non-Louisiana high school;

d. the principal or headmaster or designee of an out-of-state high school is responsible only for providing the high school transcript or the date of graduation for those students who have applied for a student aid program administered by LASFAC.

3. The Louisiana Department of Education shall certify to LASFAC the names of students who are enrolled in and have completed all mandatory requirements through the twelfth grade level of a state-approved home study program.

#### B. Procedures for Reporting and Certifying Student Performance

1.a. Through the 2002 academic year (high school), the responsible high school authority shall record student performance on the form provided by LASFAC or in an electronic format pre-approved by LASFAC. The certification form shall be completed, certified and returned to LASFAC by the deadline specified on the form.

b. Commencing with the 2003 academic year (high school), the responsible high school authority shall submit the required student information in a standard electronic format approved by LASFAC.

2.a. Through the 2002 academic year (high school), the certification form shall contain, but is not limited to, the following reportable data elements:

i. student's name, address, phone number and social security number;

ii. month and year of high school graduation;

iii. final cumulative high school grade point average for all courses attempted, converted to a maximum 4.00 scale, if applicable (Note: Beginning with students graduating in 2002-2003, the cumulative high school grade point average will be calculated by using only grades obtained in completing the core curriculum); and

iv. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended;. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

b. Commencing with the 2003 academic year (high school), certification shall contain, but is not limited to, the following reportable data elements:

i. student's name and social security number;

ii. month and year of high school graduation;

iii. the course code for each course completed;

iv. the grade for each course completed;

v. the grading scale for each course reported; and

vi. through the graduating class of the academic year (high school) 2002-2003, number of core units earned and the number of core units unavailable to the student at the school attended. After the graduating class of the academic year (high school) 2002-2003, core unit requirements may not be waived.

3. Through the 2002 academic year (high school), the responsible high school authority shall certify to LASFAC the final cumulative high school grade point average of each applicant and that average shall be inclusive of grades for all courses attempted and shall be computed and reported on a maximum 4.00 grading scale.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. (In this example, the school awards one extra quality point for an honors course.)

i. Example: an applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

$$5X = 12; X = 2.40$$

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

4. Commencing with the 2003 academic year (high school), LASFAC shall determine whether high school graduates have completed the core curriculum and compute the TOPS cumulative high school grade point average for each such graduate using a maximum 4.00 grading scale. Grades awarded on other than a maximum 4.00 scale shall be converted to a maximum 4.00 scale.

C. Certifying 1998 graduates for the TOPS performance award. 1998 graduates who are ranked in the top five percent of their graduating class in accordance with §1703 shall be credited with having completed the core curriculum for purposes of the TOPS; however, only those meeting the

following criteria shall be eligible for the performance award by LASFAC:

1. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

2. an ACT score of at least 23.

D. Certification.

1. Through the 2002 academic year (high school), the high school headmaster or principal or designee shall certify that:

a. all data supplied on the certification form are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

c. the school under the principal's jurisdiction shall reimburse LASFAC for the amount of a program award which was disbursed on behalf of a graduate of the school, when it is subsequently determined by audit that the school incorrectly certified the graduate.

2. Commencing with the 2003 academic year (high school), the submission of the required data by the high school headmaster or principal or designee shall constitute a certification that:

a. all data reported are true and correct, to the best of his knowledge or belief, and that they reflect the official records of the school for the students listed; and

b. records pertaining to the listed students will be maintained and available upon request to LASAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. Commencing with the 2003 academic year (high school), if a student is determined to be eligible for a TOPS Award based on data that is incorrect and the student was in fact ineligible for a TOPS award or the level awarded, the high school must reimburse LASFAC for the amount paid in excess of what the student was eligible for.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated LR 24:643 (April 1998), amended LR 24:1912 (October 1998), LR 25:258 (February 1999), LR 26: (September 2000), LR 26: (October 2000), LR 27:1863 (November 2001), LR 29:

**§1705. Notification of Certified Students**

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS performance and honors awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and to make the presentation awarding the endorsed certificates of achievement.

C.1. Through the 2002 academic year (high school), if the certifying authority elects to notify students of their certification, then the following disclaimer shall be included

in any communication to the student: "Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program.

a. You must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and

b. You must be accepted for enrollment by an eligible Louisiana college and be registered as a full-time undergraduate student; and

c. You must annually apply for federal student aid, if eligible for such aid, by the deadline required for consideration for state aid; and

d. You must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

2. Commencing with the 2003 academic year (high school), if the certifying authority elects to notify students of their potential eligibility for an award, then the following disclaimer shall be included in any communication to the student: "Although it appears that you have satisfied the academic requirements for a Tuition Opportunity Program for Student s(TOPS) Award based on this school's review of the core curriculum courses you have completed and calculation of your TOPS cumulative high school grade point average, you must satisfy all of the following conditions to redeem a scholarship under this program:

a. the Louisiana Student Financial Assistance Commission (LASFAC) must determine that you have in fact completed the TOPS core curriculum courses;

b. LASFAC must determine that your TOPS cumulative high school grade point average based on the TOPS core curriculum meets the statutory requirements;

c. you must be a Louisiana resident as defined by LASFAC;

d. you must be accepted for enrollment by an eligible Louisiana postsecondary institution and be registered as a full-time undergraduate student no later than the next semester following the first anniversary of your graduation from high school;

e. you must apply for federal student aid, if eligible for such aid, by the deadline required for consideration for consideration for state; and

f. you must have met all academic and nonacademic requirements and be officially notified of your award by LASFAC."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated LR 24:644 (April 1998), amended LR 24:1913 (October 1998). Repromulgated LR 27:1864 (November 2001), LR 29:126 (February 2003), LR 29:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., April 20, 2003, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

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

**RULE TITLE: Scholarship/Grant Programs**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
In addition to the nominal cost of publishing in the *Louisiana Register*, the agency anticipates no costs to the program as a result of these changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No impact on revenue collections is anticipated to result from these Rule changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
These changes accommodate the technical colleges' transition from term enrollment periods to semesters and revise responsibilities of high schools regarding certification of student achievement and notification given by high schools to students who may be eligible for a TOPS award.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No impact on competition and employment is anticipated to result from this rule.

George Badge Eldredge  
General Counsel  
0303#087

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

Student Tuition and Revenue Trust  
(START Saving) Program  
(LAC 28:VI.315)

The Louisiana Tuition Trust Authority (LATTA) announces its intention to amend Rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 3091-3099.2).

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

**Title 28  
EDUCATION**

**Part VI. Student Financial Assistance—Higher  
Education Savings**

**Chapter 3. Education Savings Account**

**Subchapter A. Student Tuition Trust Authority**

**§315. Miscellaneous Provisions**

A. - B.6. ...

7. For the year ending December 31, 2002, the Louisiana Education Tuition and Savings Fund earned an interest rate of 5.82 percent.

8. For the year ending December 31, 2002, the Earnings Enhancements Fund earned an interest rate of 5.91 percent.

C. - R. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23: 718 (June 1997), amended LR 24:1274 (July 1998), amended LR 26:1263

(June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., April 20, 2003, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge  
General Counsel

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

**RULE TITLE: Student Tuition and Revenue Trust  
(START Saving) Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no implementation costs or savings to state or local governmental units as a result of these changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from the revision.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
These changes adopt interest rates for deposits and earnings enhancements for the year ending December 31, 2002, which have slightly declined. START account owners will earn slightly less than in the past years.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No impact on competition and employment is anticipated to result from this Rule.

George Badge Eldredge  
General Counsel  
0303#086

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Incorporation by Reference C2002  
(LAC 33:I.3931; III.507, 2160, 3003,  
5116, 5122, 5311, 5901; V.Chapter 30;  
IX.2301, 2531, 2533; and XV.1517)(OS047\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.3931; III.111, 507, 2160, 3003, 5116, 5122, 5311, and 5901; V.Chapter 30.Appendices A-L; IX.2301, 2531, and 2533; and XV.1517 (Log #OS047\*).

This proposed Rule is identical to federal regulations found in 10 CFR 71, Appendix A, January 1, 2002; 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, 70.6(a), 117.3, 136, 266, Appendices I-IX and XI-XIII, 302.4, 401, and 405-471, July 1, 2002; and 67 FR 58997, September 19, 2002 and 67 FR 64260 - 64268, October 17, 2002, which are applicable

in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This proposed Rule incorporates by reference into LAC 33:I, III, V, IX, and XV the corresponding regulations in 10 CFR 71, Appendix A, January 1, 2002; 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, 70.6(a), 117.3, 136, 266, Appendices I-IX and XI-XIII, 302.4, 401, and 405-471, July 1, 2002; and amendments to Part 420 in 67 FR 58997, September 19, 2002 and Part 430 in 67 FR 64260 - 64268, October 17, 2002. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference package is being proposed to keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this proposed Rule are to mirror the federal regulations in order to maintain equivalency.

This proposed Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part I. Office of the Secretary**

#### **Subpart 2. Notification**

### **Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges**

#### **Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges**

##### **§3931. Reportable Quantity List for Pollutants**

A. ...

1. 40 CFR 117.3, July 1, 2002, Table 117.3C Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

2. 40 CFR 302.4, July 1, 2002:

a. Table 302.4C List of Hazardous Substances and Reportable Quantities; and

b. Appendix A to §302.4C Sequential CAS Registry Number List of CERCLA Hazardous Substances.

B. - Note @. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025.J, 2060.H, 2076.D, 2183.I, 2194.C, 2204.A, and 2373.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:

### **Part III. Air**

## **Chapter 5. Permit Procedures**

### **§507. Part 70 Operating Permits Program**

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2002. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:

### **Chapter 21. Control of Emission of Organic Compounds**

#### **Subchapter N. Method 43C Capture Efficiency Test Procedures**

##### **§2160. Procedures**

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2002, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:

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

**Subchapter A. Incorporation by Reference (IBR)**

**§3003. IBR 40 Code of Federal Regulations (CFR)**

**Part 60**

A. Except as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2002, are hereby incorporated by reference as they apply to the state of Louisiana.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29: (March 2003), LR 29:

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

**Subchapter B. Incorporation by Reference of 40 CFR**

**Part 61 (National Emission Standards for Hazardous Air Pollutants)**

**§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2002, and specifically listed in the following table are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR 61	Subpart/Appendix Heading
***	
[See Prior Text in Subpart A – Appendix C]	

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), LR 25:1464 (August 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:

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

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

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air

Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2002, are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

B. - C.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999), LR 25:1798 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:

**Chapter 53. Area Sources of Toxic Air Pollutants**

**Subchapter B. Incorporation by Reference of 40 CFR**

**Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources**

**§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2002, and specifically listed in the following table are hereby incorporated by reference as they apply to area sources in the state of Louisiana.

40 CFR 63	Subpart/Appendix Heading
***	
[See Prior Text in Subpart A – M]	
Subpart N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart O	Ethylene Oxide Emissions Standards for Sterilization Facilities
Subpart T	National Emission Standards for Halogenated Solvent Cleaning
***	
[See Prior Text in Subpart X]	
Subpart LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
Subpart VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
Subpart EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

B. - C....

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), LR 25:1464 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:

**Chapter 59. Chemical Accident Prevention and Minimization of Consequences**

**Subchapter A. General Provisions**

**§5901. Incorporation by Reference of Federal Regulations**

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2002.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—Hazardous Waste**

**Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces**

**Appendices**

**Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals**

A. 40 CFR 266, Appendix I, July 1, 2002, is hereby incorporated by reference.

**Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine**

A. 40 CFR 266, Appendix II, July 1, 2002, is hereby incorporated by reference.

**Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride**

A. 40 CFR 266, Appendix III, July 1, 2002, is hereby incorporated by reference.

**Appendix D. Reference Air Concentrations**

A. 40 CFR 266, Appendix IV, July 1, 2002, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, Appendix VIII and 266, Appendix V shall mean LAC 33:V.3105.Table 1 and Appendix E of this Chapter, respectively.

**Appendix E. Risk Specific Doses (10<sup>-5</sup>)**

A. 40 CFR 266, Appendix V, July 1, 2002, is hereby incorporated by reference.

**Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]**

A. 40 CFR 266, Appendix VI, July 1, 2002, is hereby incorporated by reference.

**Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues**

A. 40 CFR 266, Appendix VII, July 1, 2002, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105.Table 1, 3025.B.1 and B.2.a, and Chapter 22.Table 2, respectively.

**Appendix H. Organic Compounds for Which Residues Must be Analyzed**

A. 40 CFR 266, Appendix VIII, July 1, 2002, is hereby incorporated by reference.

**Appendix I. Methods Manual for Compliance with the BIF Regulations**

A. 40 CFR 266, Appendix IX, July 1, 2002, is hereby incorporated by reference, except as follows.

1. - 3. ...

4. Repealed.

B. ...

**Appendix J. Lead-Bearing Materials That May Be Processed in Exempt Lead Smelters**

A. 40 CFR 266, Appendix XI, July 1, 2002, is hereby incorporated by reference.

**Appendix K. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces**

A. 40 CFR 266, Appendix XII, July 1, 2002, is hereby incorporated by reference, except that the footnote should be deleted.

**Appendix L. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units**

A. 40 CFR 266, Appendix XIII, July 1, 2002, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII shall mean LAC 33:V.3105.Table 1.

**Part IX. Water Quality**

**Chapter 23. The LPDES Program**

**Subchapter A. Definitions and General Program Requirements**

**§2301. General Conditions**

A - E ...

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter shall refer to those regulations published in the July 1, 2002 CFR, unless otherwise noted.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:

**Subchapter N. Incorporation by Reference**

**§2531. 40 CFR Part 136**

A. 40 CFR Part 136, July 1, 2002, Guidelines Establishing Test Procedures for the Analysis of Pollutants, is hereby incorporated by reference in its entirety.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:



**§2533. 40 CFR Chapter I, Subchapter N**

A. 40 CFR, Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405 – 471, July 1, 2002, and amendments to Part 420 in 67 FR 58997, September 19, 2002 and Part 430 in 67 FR 64260-64268, October 17, 2002, are hereby incorporated by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), LR 25:1467 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:

**Part XV. Radiation Protection**

**Chapter 15. Transportation of Radioactive Material**

**§1517. Incorporation by Reference**

A. The department incorporates by reference 10 CFR Part 71, Appendix A, January 1, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), IR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS047\*. Such comments must be received no later than April 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of OS047\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

0303#070

**NOTICE OF INTENT**

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

Incorporation by Reference of 40 CFR Part 93  
(LAC 33:III.1432)(AQ231\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.1432 (Log #AQ231\*).

This proposed rule is identical to federal regulations found in 40 CFR Part 93, Subpart A, July 1, 2002, and 67 FR 50808-50817, August 6, 2002, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This proposed rule incorporates by reference into the state transportation conformity rule the latest edition of 40 CFR Part 93, dated July 1, 2002, and EPA amendments to the federal transportation conformity rule that were finalized August 6, 2002. The EPA rule amendments change two provisions of the transportation conformity rule that will provide state and local governments with additional time in the transportation conformity process. The changes are that areas designated nonattainment for the first time have a one-year grace period following the effective date of their nonattainment designation before conformity applies and conformity is required within 18 months of EPA's finding that SIP motor vehicle emission budgets are adequate for use in the conformity process. The Rule is effective upon the date of promulgation. The basis and rationale for this rule are to mirror the federal transportation conformity regulations as amended through August 6, 2002.

This proposed Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air**

**Chapter 14. Conformity  
Subchapter B. Conformity to State or Federal  
Implementation Plans of Transportation  
Plans, Programs, and Projects Developed,  
Funded, or Approved Under Title 23  
U.S.C. or the Federal Transit Act**

**§1432. Incorporation by Reference**

A. 40 CFR Part 93, Subpart A, July 1, 2002, and amended Sections 102-104 in the *Federal Register*, Volume 67, No. 151, August 6, 2002, pages 50808 - 50817, are hereby incorporated by reference with the exclusion of Section 105.

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 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ231\*. Such comments must be received no later than April 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of AQ231.\*

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

0303#069

### NOTICE OF INTENT

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

Motiva Enterprises Delisting Petition  
(LAC 33:V.Chapter 49)(HW079P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.Chapter 49.Appendix E (Log # HW079P).

Motiva Enterprises LLC is petitioning to exclude from the hazardous waste regulations (delist) residual solids resulting

from the thermal desorption recycling of oil-bearing secondary materials at the Norco Oil Recovery Facility in Norco, Louisiana. LAC 33:V.105.M allows a hazardous waste generator to petition the department for this kind of rulemaking when a listed hazardous waste does not meet any of the criteria that justified the original listing. Based on extensive testing, the department has determined that the nature of this material does not warrant retaining this material as a hazardous waste. The basis and rationale for this proposed rule are to grant the delisting petition based on the supporting documentation submitted by Motiva Enterprises of Norco, Louisiana.

This proposed Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

### Title 33

### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials Subpart 1. Department of Environmental Quality- Hazardous Waste

#### Chapter 49. Lists of Hazardous Wastes

#### Appendix E. Wastes Excluded Under LAC 33:V.105.M

Table E1 - Wastes Excluded	
Facility	Address
*** [See Prior Text in DuPont Dow Elastomers LLC – Marathon Oil Co.]	
Facility	Address
Motiva Enterprises LLC	Norco, LA
Waste Description	
Residual solids, at a maximum annual generation rate of 10,000 cubic yards per year (7,500 tons/year), are generated from the thermal desorption recycling of oil-bearing secondary materials resulting from petroleum processing operations, which are classified as newly generated EPA Hazardous Waste Number F037, petroleum refinery primary oil/water/solids separation sludge (effective February 8, 1999, per the updated definition promulgated on August 6, 1998, and the corrected definition dated June 8, 2000). The constituents of concern for F037 waste are listed as hexavalent chromium, lead, benzene, benzo(a)pyrene, and chrysene (see LAC 33:V.4901). Motiva must implement a testing and management program that meets the following conditions for the exclusion to be valid.	
(1). Testing Sample collection and analyses, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.	
(1)(A). Inorganic Testing During the first 12 months of this exclusion, Motiva must collect and analyze a monthly composite sample of the residual solids. Composite samples must be composed of a minimum of two representative grab samples from each operating day during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, silver, vanadium, and zinc, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Motiva may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.	

<p>(1)(B). Subsequent Inorganic Testing Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(A). Motiva must continue to monitor operating conditions and analyze quarterly composite samples representative of normal operations. The samples must be composed of representative grab samples from each operating day during a representative week of operation, during the first month of each quarterly period. These quarterly representative composite samples must be analyzed for the constituents listed in condition (3)(A) prior to disposal of the residual solids. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Motiva must re-institute testing as required in condition (1)(A). Motiva may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p>
<p>(1)(C). Organic Testing During the first 12 months of this exclusion, Motiva must collect and analyze two monthly grab samples of the residual solids. These two representative grab samples should be collected on different operating days during a representative week of operation. The samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. Motiva must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for anthracene, benzene, toluene, xylenes, carbon disulfide, chrysene, naphthalene, and pyrene, including quality control information. If the department and Motiva concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(B), then Motiva may replace the organic testing required in condition (1)(C) with the organic testing required in condition (1)(D). Condition (1)(C) shall remain effective until this concurrence is reached.</p>
<p>(1)(D). Subsequent Organic Testing Following concurrence by the department, Motiva may substitute the following testing conditions for those in condition (1)(C). Motiva must continue to monitor operating conditions and analyze two annual grab samples representative of normal operations. The samples must be representative grab samples from different operating days during a representative week of operation, during the first month of each annual period. These annual representative grab samples must be analyzed for the constituents listed in condition (3)(B) prior to disposal of the residual solids. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the annual sample, Motiva must re-institute testing as required in condition (1)(C). Motiva may, at its discretion, analyze grab samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p>
<p>(2). Waste Holding and Handling Motiva must store as hazardous wastes all residual solids generated until each batch has completed verification testing, as specified in conditions (1)(A) - (1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any monthly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated and/or stabilized as allowed below until the residual solids meet the delisting levels, or managed and disposed of in accordance with Subtitle C of RCRA. If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in condition (3)(A), then Motiva may stabilize the material with Type I portland cement and/or hydrated lime as demonstrated in the petition to immobilize the metals. Following stabilization, Motiva must repeat analyses in condition (3)(A) prior to disposal.</p>

<p>(3). Delisting Levels Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. All leachable concentrations in the extract must be less than the following levels (all units are milligrams per liter).</p>
<p>(3)(A). Inorganic Constituents Antimony - 0.50; Arsenic - 0.50; Barium - 50.0; Chromium - 0.50; Lead - 0.50; Mercury - 0.05; Nickel - 5.0; Selenium - 1.0; Silver - 0.5; Vanadium - 1.6; Zinc - 50.0.</p>
<p>(3)(B). Organic Constituents Anthracene - 0.20; Benzene - 0.10; Carbon disulfide - 4.8; Chrysene - 0.05; Naphthalene - 0.05; Pyrene - 0.05; Toluene - 0.10; Xylenes - 0.10.</p>
<p>(4). Changes in Operating Conditions If Motiva significantly changes the operating conditions specified in the petition, Motiva must notify the department in writing. Following receipt of written approval by the department, Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required by conditions (1)(A) and (1)(C), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).</p>
<p>(4)(A). Processing Equipment Motiva may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Motiva changes operating equipment, i.e., generic thermal desorption units, Motiva must re-institute processing and initiate testing required in conditions (1)(A) and (1)(C) for a minimum of four months. Motiva must report unit operating conditions and test data required in conditions (1)(A) and (1)(C), including quality control data, obtained during this period, no later than 60 days after the changes take place. Following written notification by the department, Motiva may replace testing conditions (1)(A) and (1)(C) with (1)(B) and (1)(D). Motiva must fulfill all other requirements in condition (1).</p>
<p>(4)(B). Batch Processing Motiva may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Motiva initiates batch processing and changes the operating conditions established under condition (1), Motiva must re-institute the testing required in conditions (1)(A) and (1)(C) during such batch processing events, monitor unit operating conditions, and perform testing required by conditions (1)(A) and (1)(C), as appropriate. Following the completion of batch processing operations, Motiva must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.</p>
<p>(5). Data Submittal Motiva must notify the department, in writing, at least two weeks prior to initiating condition (1)(A). All data obtained to fulfill condition (1) must be submitted to the Assistant Secretary of the Office of Environmental Services, LDEQ, 7290 Bluebonnet Blvd, Baton Rouge, LA 70810, within 60 days after each sampling event. Records of operating conditions and analytical data from condition (1) must be compiled, summarized, and maintained on-site for a minimum of three years. These records and data must be furnished upon request by the department and made available for inspection. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time shall be considered by the department, at its discretion, sufficient basis to revoke the exclusion. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted.</p>

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In the event that any of this information is determined by the department, in its sole discretion, to be false, inaccurate, or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had been in effect, or to the extent directed by the department, and that the company will be liable for any actions taken in contravention of the company's environmental obligations under the Louisiana Environmental Quality Act premised upon the company's reliance on the void exclusion."

(6). Reopener Language

If, at any time after disposal of the delisted waste, Motiva possesses or is otherwise made aware of any environmental data (including but not limited to, leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by the department in granting the petition, Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. If the testing of the waste, as required by condition (1), does not meet the delisting requirements of condition (3), Motiva must report the data, in writing, to the department within 10 days of first possessing or being made aware of that data. Based on the information described herein and any other information received from any source, the department will make a preliminary determination as to whether the reported information requires that the department take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. If the department determines that the reported information does require departmental action, the department will notify the facility, in writing, of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Motiva with an opportunity to present information as to why the proposed action is not necessary. Motiva shall have 10 days from the date of the department's notice to present such information. Following the receipt of information from Motiva, or if no such information is received within 10 days, the department will issue a final written determination describing the departmental actions that are necessary to protect human health or the environment. Any required action described in the department's determination shall become effective immediately, unless the department provides otherwise.

(7). Notification Requirements

Motiva must provide a one-time written notification to any state regulatory agency in a state to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290

Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW079P. Such comments must be received no later than May 1, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to [lynnw@deq.state.la.us](mailto:lynnw@deq.state.la.us). Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of HW079P.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Motiva Enterprises Delisting Petition**

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

Motiva Enterprises LLC is requesting delisting of its residual solids. Approving or disapproving this delisting will not affect state agency staffing levels. There are no costs or savings associated with implementation of this Rule.

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

The state will collect \$1,923/yr more in industrial waste tonnage fee revenue when the residual solids are delisted. Current hazardous waste disposal is at Waste Management's facility in Emelle, AL. Since disposal is out of state, there is no state revenue currently generated. When the delisting is approved, the solid waste may be disposed in a local solid waste landfill.

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

Motiva Enterprises LLC will pay \$1,923 per year more in industrial waste tonnage fees. Motiva Enterprises LLC and Shell Chemical (co-located at the Norco East Site) will have a net estimated savings of approximately \$295,000 per year for costs related to transportation and disposal. The analytical laboratory employed by Motiva will eventually experience a

decrease in income of approximately \$12,500 per year. The delisting of these residual solids will not relieve the company from any liability for these wastes under federal or state law.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The economic benefits of the delisting will help ensure competitive pricing and, thereby, continued employment associated with this oil recovery operation.

James H. Brent, Ph.D.  
Assistant Secretary  
0303#068

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Postponement of Permit Deadline for Oil  
and Gas Construction Activities  
(LAC 33:IX.2341)(WQ047\*)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2341 (Log #WQ047\*).

This proposed Rule is identical to federal regulations found in 40 CFR 122.26, as amended in 68 FR 11325 - 11330, March 10, 2003, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

The proposed Rule will allow operators at construction sites related to oil and gas exploration, production, processing, or treatment operations, or transmission facilities that disturb equal to or greater than one acre and less than five acres of land to legally conduct those construction activities without being permitted until March 10, 2005, the federal permit authorization deadline for those construction activities. The Louisiana Pollutant Discharge Elimination System (LPDES) program delegation agreement with EPA requires consistency with the federal NPDES program. EPA has postponed the permit authorization deadline for NPDES storm water permits for oil and gas related construction activities in this category until March 10, 2005. The basis and rationale for this Rule are to mirror the federal regulations.

This proposed Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33  
ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

**Chapter 23. The LPDES Program**

**Subchapter B. Permit Application and Special LPDES  
Program Requirements**

**§2341. Storm Water Discharges**

A. - E.7.c. ...

8. Any storm water discharge associated with small construction activity identified in Subparagraph B.15.a of this Section, other than discharges associated with small construction activity at oil and gas exploration, production, process, and treatment operations or transmission facilities, requires permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by March 10, 2005.

E.9. - G.4.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552 (November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ047\*. Such comments must be received no later than April 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of WQ047\*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo

James H. Brent, Ph.D.  
Assistant Secretary

0303#071

## NOTICE OF INTENT

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

#### Managed Care Option (MCO)C Plan of Benefits (LAC 32:IX.Chapters 1-7)

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), as amended and reenacted by Act 1178 of 2001, 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 gives notice of its intent to adopt an entire new Plan of Benefits for the Office of Group Benefits, designating it as the Managed Care Option (MCO) Plan of Benefits. The MCO Plan of Benefits sets forth the terms and conditions pursuant to which eligibility and benefit determinations are made with regard to the self-insured health and accident benefits plan, designated as the MCO Plan, provided for state employees and their dependents pursuant to R.S. 42:851 et seq. LAC Title 32, Part IX, entitled "Health Maintenance OrganizationsCHMO" will be repealed in its entirety and replaced by a new Part IX, entitled "Managed Care Option (MCO)C Plan of Benefits," as follows.

The proposed Rule has no known impact on family formation, stability, or autonomy.

#### Title 32

### EMPLOYEE BENEFITS

#### Part IX. Managed Care Option (MCO)C Plan of Benefits

##### Chapter 1. Eligibility

##### §101. Persons to be Covered

NOTE: Eligibility requirements apply to all participants in the program, whether in the PPO plan, the EPO plan, the MCO Plan, or an HMO plan.

##### A. Employee Coverage

1. *Employee* see §601.

2. Husband and Wife, both *Employees*. No one may be enrolled simultaneously as an *employee* and as a *dependent* under the plan, nor may a *dependent* be covered by more than one *employee*. If a covered spouse chooses at a later date to be covered separately, and is eligible for coverage as an *employee*, that person will be a covered *employee* effective the first day of the month after the election of separate coverage. The change in coverage will not increase the benefits.

3. Effective Dates of Coverage, New *Employee*. Coverage for each *employee* who completes the applicable enrollment form and agrees to make the required payroll contributions to his *participant employer* is to be effective as follows.

a. If employment begins on the first day of the month, coverage is effective the first day of the following month.

b. If employment begins on the second day of the month or after, coverage is effective the first day of the second month following employment.

c. *Employee coverage* will not become effective unless the *employee* completes an application for coverage within 30 days following the date of employment. An *employee* who completes an application after 30 days following the date of employment will be considered an overdue applicant.

##### 4. Re-Enrollment, Previous Employment

a. An *employee* whose employment terminated while covered, who is re-employed within 12 months of the date of termination will be considered a re-enrollment, previous employment applicant. A re-enrollment previous employment applicant will be eligible for only that classification of coverage (*employee*, *employee* and one *dependent*, family) in force on the effective date of termination.

b. If an *employee* acquires an additional *dependent* during the period of termination, that *dependent* may be covered if added within 30 days of re-employment.

6. Members of Boards and Commissions. Except as otherwise provided by law, members of boards or commissions are not eligible for participation in the plan. This Section does not apply to members of school boards or members of state boards or commissions who are defined by the *participant employer* as full time *employees*.

7. Legislative Assistants. Legislative assistants are eligible to participate in the plan if they are declared to be full-time *employees* by the *participant employer* and have at least one year of experience or receive at least 80 percent of their total compensation as legislative assistants.

8. Pre-Existing Condition (PEC)CNew *employees* (on and after July 1, 2001).

a. The terms of the following paragraphs apply to all eligible *employees* whose employment with a *participant employer* commences on or after July 1, 2001, and to the *dependents* of such *employees*.

b. The program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

c. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received during the six months immediately prior to the enrollment date. The provisions of this section do not apply to pregnancy

d. If the *covered person* was previously covered under a *group health plan*, *Medicare*, Medicaid or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

## B. Retiree Coverage

### 1. Eligibility

a. *Retirees of participant employers* are eligible for *retiree* coverage under this Plan.

b. An *employee* retired from a *participant employer* may not be covered as an *employee*.

c. *Retirees* are not eligible for coverage as overdue applicants.

2. Effective Date of Coverage. *Retiree* coverage will be effective on the first day of the month following the date of retirement, if the *retiree* and *participant employer* have agreed to make and are making the required contributions.

### C. Dependent Coverage

1. Eligibility. A *dependent* of an eligible *employee* or *retiree* will be eligible for *dependent coverage* on the later of the following dates:

a. the date the *employee* becomes eligible;

b. the date the *retiree* becomes eligible;

c. the date the covered *employee* or covered *retiree* acquires a *dependent*.

### 2. Effective Dates of Coverage

a. *Dependents of Employees*. Coverage for *dependents* will be effective on the date the *employee* becomes eligible for *dependent coverage*.

b. *Dependents of Retirees*. Coverage for *dependents* of *retirees* will be effective on the first day of the month following the date of retirement if the *employee* and his *dependents* were covered immediately prior to retirement. Coverage for *dependents* of *retirees* first becoming eligible for *dependent coverage* following the date of retirement will be effective on the date of marriage for new spouses, the date of birth for newborn *children*, or the *date acquired* for other classifications of *dependents*, if application is made within 30 days of the date of eligibility.

### D. Pre-Existing Condition (PEC) Overdue Application

1. The terms of the following paragraphs apply to all eligible *employees* who apply for coverage after 30 days from the date the *employee* became eligible for coverage and to all eligible *dependents* of *employees* and *retirees* for whom the application for coverage was not completed within 30 days from the *date acquired*. The provisions of this Section do not apply to military reservists or national guardsmen ordered to active duty who return to state service and reapply for coverage with the *program* within 30 days of the date of reemployment. Coverage will be reinstated effective on the date of return to state service. The effective date of coverage will be:

a. the first day of the month following the date of receipt by the *program* of all required forms prior to the fifteenth of the month;

b. the first day of the second month following the date of the receipt by the *program* of all required forms on or after the fifteenth of the month.

2. The *program* will require that all overdue applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

3. Medical expenses incurred during the first 12 months following enrollment of *employees* and/or *dependents* under the plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident, or injury for which medical advice, diagnosis, care, or treatment was recommended or received

during the six months immediately prior to the enrollment date. The provisions of this section do not apply to pregnancy

4. If the *covered person* was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (*HIPAA*), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

E. Special Enrollments *CHIPAA*. In accordance with *HIPAA*, certain eligible persons for whom the option to enroll for coverage was previously declined, and who would be considered overdue applicants, may enroll by written application to the *participant employer* under the following circumstances, terms and conditions for special enrollments.

1. Loss of Other Coverage. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined because the *employees* or *dependents* had other coverage which has terminated due to:

a. loss of eligibility through separation, divorce, termination of employment, reduction in hours, or death of the *plan* participant; or

b. cessation of *participant employer* contributions for the other coverage, unless the *participant employer* contributions were ceased for cause or for failure of the individual participant to make contributions; or

c. the *employee* or *dependent* having had *COBRA* continuation coverage under a *group health plan* and the *COBRA* continuation coverage has been exhausted, as provided in *HIPAA*.

2. After Acquiring *Dependents*. Special enrollment will be permitted for *employees* or *dependents* for whom the option to enroll for coverage was previously declined when the *employee* acquires a new *dependent* by marriage, birth, adoption, or placement for adoption.

a. A special enrollment application must be made within 30 days of the termination date of the prior coverage or the date the new *dependent* is acquired. Persons eligible for special enrollment for which an application is made more than 30 days after eligibility will be considered overdue applicants subject to a pre-existing condition limitation.

b. The effective date of coverage shall be:

i. for loss of other coverage or marriage, the first day of the month following the date of receipt by the *program* of all required forms for enrollment;

ii. for birth of a *dependent*, the date of birth;

iii. for adoption, the date of adoption or placement for adoption.

c. Special enrollment applicants must complete acknowledgment of pre-existing condition and statement of physical condition forms.

d. Medical expenses incurred during the first 12 months that coverage for the special enrollee is in force under this *plan* will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care or *treatment* was recommended or received during the 6-

month period immediately prior to the enrollment date. The provisions of this Section do not apply to pregnancy.

e. If the special enrollee was previously covered under a *group health plan*, *Medicare*, *Medicaid* or other creditable coverage as defined in *HIPAA*, the duration of the prior coverage will be credited against the initial 12-month period used by the *program* to exclude benefits for a pre-existing condition if the termination under the prior coverage occurred within 63 days of the date of coverage under the *plan*.

F. *Retirees* Special Enrollment. *Retirees* will not be eligible for special enrollment, except under the following conditions:

1. retirement began on or after July 1, 1997;
2. the *retiree* can document that creditable coverage was in force at the time of the election not to participate or continue participation in the *plan*;
3. the *retiree* can demonstrate that creditable coverage was maintained continuously from the time of the election until the time of requesting special enrollment;
4. the *retiree* has exhausted all *COBRA* and/or other continuation rights and has made a formal request to enroll within 30 days of the loss of other coverage; and
5. the *retiree* has lost eligibility to maintain other coverage through no fault of his/her own and has no other creditable coverage in effect.

G. Health Maintenance Organization (HMO) Option

1. In lieu of participating in the *plan*, *employees* and *retirees* may elect coverage under an approved HMO.

2. New *employees* may elect to participate in an HMO during their initial period of eligibility. Each HMO will hold an annual enrollment period for a coverage effective date of July 1. Transfer of coverage from the *plan* to the HMO or vice-versa will only be allowed during this annual enrollment period. Transfer of coverage will also be allowed as a consequence of the *employee* being transferred into or out of the HMO geographic service area, with an effective date of the first day of the month following transfer.

3. If a *covered person* has elected to transfer coverage, but is hospitalized on July 1, the *plan*, which is providing coverage prior to July 1, will continue to provide coverage up to the date of discharge from the *hospital*.

H. *Medicare* Risk HMO Option for *Retirees*. *Retirees* who are eligible to participate in a *Medicare* Risk HMO plan who cancel coverage with the *program* upon enrollment in a *Medicare* Risk HMO plan may re-enroll in the *program* upon withdrawal from or termination of coverage in the *Medicare* Risk HMO plan, at the earlier of the following:

1. during the month of November, for coverage effective January 1; or
2. during the next annual enrollment, for coverage effective at the beginning of the next *plan* year.

I. Tricare for Life Option for Military *Retirees*. *Retirees* eligible to participate in the Tricare for Life (TFL) option on and after October 1, 2001 who cancel coverage with the *program* upon enrollment in TFL may re-enroll in the *program* in the event that the TFL option is discontinued or its benefits significantly reduced.

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 29:

### §103. Continued Coverage

A. Leave of Absence. If an *employee* is allowed an approved leave of absence by his *participant employer*, he may retain his coverage for up to one year, if the premium is paid. Failure to do so will result in cancellation of coverage. The *program* must be notified by the *employee* and the *participant employer* within 30 days of the effective date of the leave of absence.

B. Disability

1. *Employees* who have been granted a waiver of premium for basic or supplemental life insurance prior to July 1, 1984 may continue health coverage for the duration of the waiver if the *employee* pays the total contribution to the *participant employer*. *Disability* waivers were discontinued effective July 1, 1984.

2. If a *participant employer* withdraws from the *plan*, health and life coverage for all *covered persons* will terminate as of the effective date of withdrawal.

C. Surviving *Dependents/Spouse*. The provisions of this Section are applicable to surviving *dependents* who elect to continue coverage following the death of an *employee* or *retiree*. On or after July 1, 1999, eligibility ceases for a *covered person* who becomes eligible for coverage in a *group health plan* other than *Medicare*. Coverage under the *group health plan* may be subject to *HIPAA*.

1. Benefits under the *plan* for *covered dependents* of a deceased *covered employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurred unless the surviving *covered dependents* elect to continue coverage.

a. The surviving legal spouse of an *employee* or *retiree* may continue coverage until the surviving spouse becomes eligible for coverage in a *group health plan* other than *Medicare*.

b. The surviving *children* of an *employee* or *retiree* may continue coverage until they are eligible for coverage under a *group health plan* other than *Medicare*, or until attainment of the termination age for *children*, whichever occurs first.

c. Surviving *dependents/spouse* will be entitled to receive the same *participant employer* premium contributions as *employees* and *retirees*.

d. Coverage provided by the civilian health and medical program of the uniform services will not be sufficient to terminate the coverage of an otherwise eligible surviving legal spouse or a *dependent child*.

2. A surviving spouse or *dependent* cannot add new *dependents* to continued coverage other than a child of the deceased *employee* born after the *employee's* death.

3. Participant Employer/Dependent Responsibilities

a. It is the responsibility of the *participant employer* and surviving *covered dependent* to notify the *program* within 60 days of the death of the *employee* or *retiree*.

b. The *program* will notify the surviving *dependents* of their right to continue coverage.

c. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification, and premium payment must be made within 45 days of the date continued coverage is elected for coverage retroactive to the date coverage would have otherwise terminated.



d. Coverage for the surviving spouse under this Section will continue until the earliest of the following events occurs:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. on or after July 1, 1999, becomes eligible for coverage under a *group health plan* other than *Medicare*.

e. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following events:

- i. failure to pay the applicable premium;
- ii. on or after July 1, 1999, becomes eligible for coverage under any *group health plan* other than *Medicare*;
- iii. the attainment of the termination age for *children*.

D. *Over-Age Dependents*. If an unmarried, never married *dependent* child is incapable of self-sustaining employment by reason of mental retardation or physical incapacity and became incapable prior to the termination age for *children* and is dependent upon the covered *employee* for support, the coverage for the *dependent* child may be continued for the duration of incapacity.

1. Prior to attainment of age 21, the *program* must receive documentation for *dependents* who are mentally retarded or who have a physical incapacity.

2. For purposes of this Section, mental illness does not constitute mental retardation.

3. The *program* may require that the covered *employee* submit current proof from a licensed medical doctor of continued mental retardation or physical incapacity as often as it may deem necessary.

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 29:

## §105. COBRA

### A. Employees

1. Benefits under this *plan* for a covered *employee* will terminate on the last day of the calendar month during which employment is terminated voluntarily or involuntarily, the *employee* no longer meets the definition of an *employee* or coverage under a leave of absence expires unless the covered *employee* elects to continue at the *employee's* own expense. *Employees* terminated for gross misconduct are not eligible for *COBRA*.

2. It is the responsibility of the *participant employer* to notify the *program* within 30 days of the date coverage would have terminated because of any of the foregoing events and the *program* will notify the *employee* within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification and premium payment must be made within 45 days of the date the *employee* elects continued coverage, for coverage retroactive to the date coverage would have otherwise terminated. Coverage under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 18 months from the date coverage would have terminated;
- c. entitlement to *Medicare*;

d. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

### B. Surviving Dependents

1. Benefits for covered surviving *dependents* of an *employee* or *retiree* will terminate on the last day of the month in which the *employee's* or *retiree's* death occurs, unless the surviving covered *dependents* elect to continue coverage at his/her own expense.

2. It is the responsibility of the *participant employer* or surviving covered *dependents* to notify the *program* within 30 days of the death of the *employee* or *retiree*. The *program* will notify the surviving *dependents* of their right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of the date of notification. Premium payment must be made within 45 days of the date the continued coverage was elected, retroactive to the date coverage would have terminated.

a. Coverage for the surviving *dependents* under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. death of the surviving spouse;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition limitation.

b. Coverage for a surviving *dependent* child under this Section will continue until the earliest of the following:

- i. failure to pay the applicable premium;
- ii. 36 months beyond the date coverage would have terminated;
- iii. entitlement to *Medicare*;
- iv. coverage under a *group health plan*, except when subject to a pre-existing condition.

### C. Divorced Spouse

1. Coverage under this *plan* will terminate on the last day of the month during which dissolution of the marriage occurs by virtue of a legal decree of divorce from the *employee* or *retiree*, unless the covered divorced spouse elects to continue coverage at his or her own expense. It is the responsibility of the divorced spouse to notify the *program* within 60 days from the date of divorce and the *program* will notify the divorced spouse within 14 days of his or her right to continue coverage. Application for continued coverage must be made in writing to the *program* within 60 days of notification. Premium payment must be made within 45 days of the date continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

2. Coverage for the divorced spouse under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

### D. Dependent Children

1. Benefits under this *plan* for a covered *dependent* child of a covered *employee* or *retiree* will terminate on the last day of the month during which the *dependent* child no longer meets the definition of an eligible covered *dependent*, unless the *dependent* elects to continue coverage at his or her

own expense. It is the responsibility of the *dependent* to notify the *program* within 60 days of the date coverage would have terminated and the *program* will notify the *dependent* within 14 days of his or her right to continue coverage.

2. Application for continued coverage must be made in writing to the *program* within 60 days of receipt of notification and premium payment must be made within 45 days of the date the continued coverage is elected, for coverage retroactive to the date coverage would have terminated.

3. Coverage for *children* under this Section will continue until the earliest of the following:

- a. failure to pay the applicable premium;
- b. 36 months beyond the date coverage would have terminated;
- c. entitlement to *Medicare*;
- d. coverage under a *group health plan*, except when subject to a pre-existing condition.

#### E. Dependents of COBRA Participants

1. If a covered terminated *employee* has elected to continue coverage and if during the period of continued coverage the covered spouse or a covered *dependent* child becomes ineligible for coverage due to:

- a. death of the *employee*;
- b. divorce from the *employee*; or
- c. a *dependent* child no longer meets the definition of an eligible covered *dependent*;

2. Then, the spouse and/or *dependent* child may elect to continue coverage at their own expense. Coverage will not be continued beyond 36 months from the date coverage would have terminated.

#### F. Dependents of Non-Participating Terminated Employee

1. If an *employee* no longer meets the definition of an *employee*, or a leave of absence has expired and the *employee* has not elected to continue coverage, the covered spouse and/or covered *dependent children* may elect to continue coverage at their own expense. The elected coverage will be subject to the notification and termination provisions.

2. In the event a *dependent* child, covered under the provisions of the preceding paragraph no longer meets the definition of an eligible covered *dependent*, he or she may elect to continue coverage at his or her own expense. Coverage cannot be continued beyond 36 months from the date coverage would have terminated.

G Miscellaneous Provisions. During the period of continuation, benefits will be identical to those provided to others enrolled in this *plan* under its standard eligibility provisions for *employee* and *retirees*.

#### H. Disability COBRA

1. If a covered *employee* or covered *dependent* is determined by social security or by the *program* staff (in the case of a person who is ineligible for social security *disability* due to insufficient "quarters" of employment), to have been totally disabled on the date the *covered person* became eligible for continued coverage or within the initial 18 months of coverage, coverage under this *plan* for the *covered person* who is totally disabled may be extended at his or her own expense up to a maximum of 29 months from

the date coverage would have terminated. To qualify the *covered person* must:

a. submit a copy of his or her social security *disability* determination to the *program* before the initial 18-month continued coverage period expires and within 60 days after the date of issuance of the social security determination; or

b. submit proof of total *disability* to the *program* before the initial 18-month continued coverage period expires.

2. For purposes of eligibility for continued coverage under this Section, total *disability* means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of 12 months. To meet this definition one must have a severe impairment which makes one unable to do his previous work or any other substantial gainful activity which exists in the national economy, based upon a person's residual functional capacity, age, education and work experience.

3. The staff and medical director of the *program* will make this determination of total *disability* based upon medical evidence, not conclusions, presented by the applicant's *physicians*, work history, and other relevant evidence presented by the applicant.

4. Coverage under this Section will continue until the earliest of the following:

a. 30 days after the month in which social security determines that the *covered person* is no longer disabled. (The *covered person* must report the determination to the *program* within 30 days after the date of issuance by social security);

b. 29 months from the date coverage would have terminated;

I. *Medicare COBRA*. If an *employee* becomes entitled to *Medicare* on or before the date the *employee's* eligibility for benefits under this *plan* terminates, the period of continued coverage available for the *employee's* covered *dependents* will be the earliest of the following:

1. failure to pay the applicable premium;
2. 36 months beyond the date coverage would have terminated;
3. entitlement to *Medicare*;
4. coverage under a *group health plan*, except when subject to a pre-existing condition.

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 29:

#### §107. Change of Classification

A. Adding or Deleting *Dependents*. The *plan member* must notify the *program* whenever a *dependent* is added to, or deleted from, the *plan member's* coverage, regardless of whether the addition or deletion would result in a change in the class of coverage. Notice must be provided within 30 days of the addition or deletion.

#### B. Change in Coverage

1. When, by reason of a change in family status (e.g., marriage, birth of child), the class of coverage is subject to change, effective on the date of the event, if application for the change is made within 30 days of the date of the event.

2. When the addition of a *dependent* results in the class of coverage being changed, the additional premium will be charged for the entire month if the date of change occurs on or before the fourteenth day of the month. If the date of change occurs on or after the fifteenth day of the month, additional premium will not be charged until the first day of the following month.

C. Notification of Change. It is the responsibility of the *employee* to notify the *program* of any change in classification of coverage affecting the *employee's* contribution amount. Any such failure later determined will be corrected on the first day of the following month.

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 29:

### §109. Contributions

A. The state of Louisiana may make a contribution toward the cost of the *plan*, as determined on an annual basis by the legislature.

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 29:

## Chapter 2. Termination of Coverage

### §201. Active Employee and Retired Employee Coverage

A. Subject to continuation of coverage and *COBRA* rules, all benefits of a *covered person* will terminate under this *plan* on the earliest of the following dates:

1. on the date the *program* terminates;
2. on the date the group or agency employing the covered *employee* terminates or withdraws from the *program*;
3. on the contribution due date if the group or agency fails to pay the required contribution for the covered *employee*;
4. on the contribution due date if the *covered person* fails to make any contribution which is required for the continuation of his coverage;
5. on the last day of the month of the covered *employee's* death;
6. on the last day of the month in which the covered *employee* ceases to be eligible.

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 29:

### §203. Dependent Coverage Only

A. Subject to continuation of coverage and *COBRA* rules, *dependent coverage* will terminate under this *plan* on the earliest of the following dates:

1. on the last day of the month the *employee* ceases to be covered.
2. on the last day of the month in which the *dependent*, as defined in this *plan* ceases to be an eligible *dependent* of the covered *employee*;
3. for grandchildren for whom the *employee* does not have legal custody or has not adopted, on the date the child's parent ceases to be a covered *dependent* under this *plan* or the grandchild no longer meets the definition of *children*;

4. upon discontinuance of all *dependent coverage* under this *plan*.

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 29:

## Chapter 3. Medical Benefits

### §301. Medical Benefits Apply when Eligible Expenses are Incurred by a Covered Person

A. Eligible Expenses. Eligible expenses are the charges incurred for the following items of service and supply when *medically necessary* for the *treatment* of disease, accident, illness, or injury. These charges are subject to the applicable *deductibles*, limits of the *fee schedule*, schedule of benefits, exclusions and other provisions of the *plan*. A charge is incurred on the date that the service or supply is performed or furnished. Eligible expenses are:

1. *hospital* care. The medical services and supplies furnished by a *hospital* or ambulatory surgical center. covered charges for *room and board* will be payable as shown in the schedule of benefits;
2. services of a *physician*;
3. routine nursing services, i.e., "floor nursing" services provided by nurses employed by the *hospital* are considered as part of the *room and board*;
4. anesthesia and its administration;
5. laboratory examinations and diagnostic X-rays;
6. nuclear medicine and electroshock therapy;
7. blood and blood plasma, blood derivatives and blood processing, when not replaced;
8. surgical and medical supplies billed for *treatment* received in a *hospital* or ambulatory surgical center, and other covered provider's surgical and medical supplies as listed below:

- a. catheters Cexternal and internal;
- b. cervical collar;
- c. leg bags for urinal drainage;
- d. ostomy supplies;
- e. prosthetic socks;
- f. prosthetic sheath;
- g. sling (arm or wrist);
- h. suction catheter for oral evacuation;
- i. surgical shoe (following foot surgery only);
- j. plaster casts;
- k. splints;
- l. surgical trays (for certain procedures);

9. services of licensed physical, occupational or speech therapist when prescribed by a *physician* and pre-approved through outpatient procedure certification;

10. intravenous injections, solutions, and eligible related intravenous supplies;

11. services rendered by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) for the *treatment* of accidental injuries to a *covered person's* sound natural teeth, if:

- a. coverage was in effect with respect to the individual at the time of the accident;
- b. *treatment* commences within 90 days from the date of the accident and is completed within two years from the date of the accident; and
- c. coverage remains continuously in effect with respect to the *covered person* during the course of the

*treatment*; eligible expenses will be limited to the original estimated total cost of *treatment* as estimated at the time of initial *treatment*;

12. *durable medical equipment*, subject to the lifetime maximum payment limitation as listed in the schedule of benefits. The *program* will require written certification by the treating *physician* to substantiate the medical necessity for the equipment and the length of time it will be used;

13. initial prosthetic appliances. Subsequent prosthetic appliances are eligible only when acceptable certification is furnished to the *program* by the attending *physician*;

14. professional ambulance services, subject to the following provisions:

a. licensed professional ambulance service in a vehicle licensed for highway use to or from a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$350 less a \$50 copayment for transportation charges. Medical services and supplies will be considered separately;

b. licensed air ambulance service to a *hospital* with facilities to treat an illness or injury. The *program* will consider a maximum up to \$1,500 less a \$250 copayment. Medical services and supplies will be considered separately;

15. one pair of eyeglass lenses or contact lenses required as a result of bilateral cataract surgery performed while coverage was in force. Expenses incurred for the eyeglass frames will be limited to a maximum benefit of \$50.

16. the first two pairs of surgical pressure support hose. Additional surgical support hose may be considered an eligible expense at the rate of one pair per six-month period;

17. the first two ortho-mammary surgical brassieres. Additional ortho-mammary surgical brassieres may be considered an eligible expense at the rate of one per six-month period;

18. orthopedic shoes prescribed by a *physician* and completely custom built;

19. acupuncture when rendered by a medical doctor;

20. eligible expenses associated with an organ transplant procedure including expenses for patient screening, organ procurement, transportation of the organ, transportation of the patient and/or donor, surgery for the patient and donor and immunosuppressant drugs, if:

a. the transplantation must not be considered experimental or investigational by the American Medical Association;

b. the transplant surgery must be performed at a medical center, which has an approved transplant program as determined by *Medicare*;

c. the *plan* will not cover expenses for the transportation of surgeons or family members of either the patient or donor;

d. all benefits paid will be applied against the *lifetime maximum benefit* of the transplant recipient.

21. services of a physical therapist and occupational therapist licensed by the state in which the services are rendered when:

a. prescribed by a licensed medical doctor;

b. services require the skills of and performed by a licensed physical therapist or licensed occupational therapist;

c. restorative potential exists;

d. meets the standard for medical practice;

e. reasonable and necessary for the *treatment* of the disease, illness, accident, injury or postoperative condition;

f. approved through outpatient procedure certification.

22. cardiac *rehabilitation* when:

a. rendered at a medical facility under the supervision of a *physician*;

b. rendered in connection with a myocardial infarction, angioplasty with or without stenting, or cardiac bypass surgery;

c. completed within 6 months following the qualifying event;

NOTE: Charges incurred for dietary instruction, educational services, behavior modification literature, health club membership, exercise equipment, preventative programs and any other items excluded by the *plan* are not covered.

23. routine physical examinations and immunizations as follows:

a. *well-baby care* expenses subject to the annual *deductible* and co-payments:

i. newborn facility and professional charges;

ii. birth to age 1 office visits for scheduled immunizations and screening;

b. *well-child care* expenses subject to the annual *deductible* and co-payments:

i. age 1 to age 3 office visits per year for scheduled immunizations and screening;

ii. age 3 to age 16 office visit per year for scheduled immunizations and screening;

c. *well-adult care* expenses, subject to co-payment specified in the schedule of benefits, for routine physical examination by a physician and related laboratory and radiology charges:

i. age 16 until age 40 once during a 3-year period;

ii. age 40 until age 50 once during a 2-year period;

iii. age 50 and over once during a 1-year period;

24. not subject to the annual *deductible*:

a. one pap test for cervical cancer per *plan year*;

b. screening mammographic examinations performed according to the following schedule:

i. one baseline mammogram during the five-year period a person is 35-39 years of age;

ii. one mammogram every two *plan years* for any person who is 40-49 years of age or more frequently if recommended by a *physician*;

iii. one mammogram every 12 months for any person who is 50 years of age or older;

c. testing for detection of prostate cancer, including digital rectal examination and prostate-specific antigen testing, once every twelve months for men over the age of 50 years, and as *medically necessary* for men over the age of 40 years;

25. *outpatient surgical facility* fees as specified in the maximum payment schedule;

26. midwifery services performed by a certified midwife or a certified nurse midwife;

27. physician's assistants, perfusionists, and registered nurse assistants assisting in the operating room;

28. splint therapy for the *treatment* of temporomandibular joint dysfunction (TMJ), limited to a

lifetime benefit of \$600 for a splint and initial panorex x-ray only. Surgical *treatment* for TMJ will only be eligible following a demonstrated failure of splint therapy and upon approval by the *program*;

29. oxygen and oxygen equipment;

30. outpatient self-management training and education, including medical nutrition therapy, for the *treatment* of diabetes, when these services are provided by a licensed health care professional with demonstrated expertise in diabetes care and *treatment* who has completed an educational program required by the appropriate licensing board in compliance with the National Standards for Diabetes Self-Management Education Program as developed by the American Diabetes Association, and only as follows:

a. a one-time evaluation and training program for diabetes self management, conducted by the health care professional in compliance with National Standards for Diabetes Self Management Education Program as developed by the American Diabetes Association, upon certification by the health care professional that the *covered person* has successfully completed the *program*, such benefits not to exceed \$500;

b. additional diabetes self-management training required because of a significant change in the patient's symptoms or conditions, limited to benefits of \$100 per year and \$2,000 per lifetime;

c. services must be rendered at a facility with a diabetes educational program recognized by the American Diabetes Association.

31.a. testing of sleep disorders only when the tests are performed at either:

i. a sleep study facility accredited by the American Sleep Disorders Association or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or

ii. a sleep study facility located within a healthcare facility accredited by JCAHO;

b. no benefits are payable for surgical *treatment* of sleep disorders (including LAUP) except following demonstrated failure of non-surgical *treatment* and upon approval by the *program*;

32. mental health and/or substance abuse services only when obtained through the *program's* managed behavioral health care organization contractor as shown in the schedule of benefits. These services must be identified by a DSM IV diagnosis code.

B. Emergency Services - Subject to all applicable terms of the Plan, *emergency services* will be considered *eligible expenses* whether rendered by a *participating provider* or non-participating provider, as follows:

1. *Emergency services* provided to a *covered person* who is later determined not to have required *emergency services* will be considered *eligible expenses* except:

a. When the *covered person's* medical condition would not have led a prudent lay person, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to health, serious impairment to bodily functions, or serious dysfunction of any bodily organ, unless the *covered person* was referred for *emergency services* by a *participating provider* or by an agent of OGB; or

b. When there was material misrepresentation, fraud, omission, or clerical error.

2. If a *covered person* requires hospitalization at a non-participating provider medically necessary inpatient services rendered by the non-participating provider will be considered eligible expenses until the *covered person* can be transferred to a participating provider.

3. OGB must be notified of the *emergency services* within 48 hours following commencement of treatment or admission, or as soon as medical circumstances permit. See also §307.C (below) regarding the requirement for pre-admission certification (PAC) for emergency admissions.

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 29:

### §303. Fee Schedule

A. The *fee schedule* sets the maximum fee that the *program* will allow for an eligible medical expense.

B. If the medical provider accepts an assignment of benefits, the *plan member* cannot be billed for amounts exceeding the *fee schedule*.

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 29:

### §305. Automated Claims Adjusting

A. Auto audit is a software program that applies all claims against its medical logic program to identify improperly billed charges, and charges for which this *plan* provides no benefits. Any claim with diagnosis or procedure codes deemed inadequate or inappropriate will be automatically reduced or denied. Providers accepting assignment of benefits cannot bill the *plan member* for the reduced amounts.

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 29:

### §307. Utilization ReviewC Pre-Admission Certification, Continued Stay Review

A. Pre-admission certification (PAC) and continued stay review (CSR) establish the medical necessity and length of inpatient *hospital* confinement.

B. For a routine vaginal delivery, PAC is not required for a stay of 2 days or less. If the mother's stay exceeds or is expected to exceed 2 days, PAC is required within 24 hours after the delivery or the date on which any complications arose, whichever is applicable. If the baby's stay exceeds that of the mother, PAC is required within 72 hours of the mother's discharge and a separate pre-certification number must be obtained for the baby. In the case of a scheduled caesarean section, it is required that PAC be obtained prior to the day of admission.

C. No benefits will be paid under the *plan*:

1. unless PAC is requested at least 72 hours prior to the planned date of admission;

2. unless PAC is requested within 48 hours of admission, or as soon as medical circumstances, permit in the case of *emergency services*;

3. for *hospital* charges incurred during any confinement for which PAC was requested, but which was not certified as *medically necessary* by the *program's* utilization review contractor;

4. for *hospital* charges incurred during any confinement for any days in excess of the number of days certified through PAC or CSR.

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 29:

### §309. Outpatient Procedure Certification (OPC)

A. OPC certifies that certain outpatient procedures and therapies are *medically necessary*.

B. OPC is required on the following procedures:

1. cataract;
2. laparoscopic cholecystectomy;
3. lithotripsy;
4. magnetic resonance imaging:
  - a. brain/head lower extremity;
  - b. upper extremity;
  - c. spine;
5. knee arthroscopy;
6. septoplasty;
7. therapies:
  - a. physical therapy;
  - b. speech therapy;
  - c. occupational therapy;
  - d. therapy with unlisted modality.

C. No benefits will be paid for the facility fee in connection with outpatient procedures, or the facility and professional fee in connection with outpatient therapies:

1. unless OPC is requested at least 72 hours prior to the planned date of procedure or therapy;

2. for charges incurred on any listed procedure for which OPC was requested but not certified as *medically necessary* by the *program's* utilization review contractor.

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 29:

### §311. Case Management

A. Case management (CM) is the care management program available in cases of illness or injury where critical care is required and/or *treatment* of extended duration is anticipated.

B. Case management may provide coverage for services that are not normally covered. To be eligible, the condition being treated must be a covered condition, and Case management must be approved prior to the service being rendered.

C. These charges are subject to the *deductible*, co-insurance, *fee schedule* and maximum benefit limitations.

D. The following criteria must be met:

1. the *program* must be the primary carrier at the time case management is requested. Any case management plan will be contingent upon the *program* remaining the primary carrier;

2. the patient must not be confined in any type of nursing home setting at the time case management is requested;

3. there must be a projected savings to the *program* through case management; or a projection that case management expenses will not exceed normal *plan* benefits; and

a. the proposed *treatment* plan will enhance the patient's quality of life;

b. benefits will be utilized at a slower rate through the alternative *treatment* plan.

E. If approved, case management may provide any of the following:

1. alternative care in special *rehabilitation* facilities;
2. alternative care in a skilled nursing facility/unit or swing bed (not nursing home), or the patient's home, subject to the *deductible* and coinsurance;
3. avoidance of complications by earlier *hospital* discharge, alternative care and training of the patient and/or family;
4. home health care services limited to 150 visits per *plan* year;
5. hospice care:
  - a. not subject to the *deductible*;
  - b. benefits are always payable at 80 percent, never at 100 percent;
6. private duty nursing care;
7. total parenteral nutrition, provided that home visits for TPN are not reimbursable separately;
8. enteral nutrition up to a single 90-day period for instances where through surgery or neuromuscular mechanisms the patient cannot maintain nutrition and the condition can reasonably be expected to improve during this one 90-day timespan.

F. Mental health and substance abuse *treatments* or conditions are not eligible for case management.

G. Benefits are considered payable only upon the recommendation of the *program's* contractor, with the approval of the attending *physician*, patient or his representative, and the *program* or its representative. Approval is contingent upon the professional opinion of the *program's* medical director, consultant, or his designee as to the appropriateness of the recommended alternative care.

H. If a condition is likely to be lengthy or if care could be provided in a less costly setting, the *program's* contractor may recommend an alternative plan of care to the *physician* and patient.

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 29:

### §313. Dental Surgical Benefits

A. When excision of one or more impacted teeth is performed by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) while coverage is in force, the *program* will pay, without *deductible*, the eligible expense actually incurred for the surgical procedure.

B. Expenses incurred in connection with the removal of impacted teeth, including pre-operative and post-operative care are subject to the *deductible*, co-insurance and the maximum benefit provisions of the *plan*.

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 29:

### **§315. Medicare Reduction**

A. If the patient has not chosen and paid a separate premium for the full coordination of benefits option, the charges will be reduced by whatever amounts are paid or payable by *Medicare*. The *program* requires written confirmation from the Social Security Administration or its successor if a person is not eligible for *Medicare* coverage. All provisions of this *plan*, including all limitations and exceptions, will be applied.

B. *Retiree 100-Medicare COB*. Upon enrollment and payment of the additional monthly premium, a *plan member* and his *dependents* may choose to have full coordination of benefits with *Medicare*. Enrollment must be made within 30 days of eligibility for *Medicare* or within 30 days of retirement if already eligible for *Medicare* and at the annual open enrollment.

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 29:

### **§317. Exceptions and Exclusions for All Medical Benefits**

A. No benefits are provided under this *plan* for:

1. cases covered, in whole or in part, by any worker's compensation program, regardless of whether the patient has filed a claim for benefits. This applies to compensation provided on an expense-incurred basis or blanket settlements for past and future losses;
2. convalescent, skilled nursing, sanitarium, or *custodial care or rest cure*;
3. expenses for elective, non-therapeutic voluntary abortion, although expenses for complications as a result are covered;
4. injuries sustained while in an aggressor role;
5. expenses incurred as a result of the patient's attempt at a felony or misdemeanor;
6. expenses incurred by a *covered person* in connection with cosmetic surgery, unless necessary for the immediate repair of a deformity caused by a disease and/or injury which occurs while coverage is in force. No payment will be made for expenses incurred in connection with the *treatment* of any body part not affected by the disease and/or injury;
7. expenses incurred for shoes and related items similar to wedges, cookies and arch supports;
8. any expense, except for actual out-of-pocket expenses, incurred by a member of a Health Maintenance Organization (HMO), Health Maintenance *Plan* (HMP) or other prepaid medical plan or medical services plan if the *covered person* is enrolled on a group (employer-sponsored) basis;
9. dental braces and orthodontic appliances (for whatever reason prescribed or utilized) and *treatment* of periodontal disease;
10. dentures, dental implants and any surgery for their use, except if needed as the result of an accident that meets the *program's* requirements;

11. medical services, *treatment* or prescription drugs provided without charge to the *covered person* or for which the *covered person* is not legally obligated to pay;

12. maternity expenses incurred by any person other than the *employee* or the *employee's* legal spouse;

13. personal convenience items including, but not limited to, admit kits, bedside kits, telephone and television, guest meals, beds, and similar items;

14. charges for services and supplies which are in excess of the maximum allowable under the medical *fee schedule*, *outpatient surgical facility fee schedule*, or any other limitations of the *plan*;

15. services and supplies which are not *medically necessary*;

16. services rendered for remedial reading and recreational, visual and behavioral modification therapy, *pain rehabilitation control and/or therapy*, and dietary or educational instruction for all illnesses, other than diabetes;

17. services and supplies in connection with or related to gender dysphoria or reverse sterilization;

18. artificial organ implants, penile implants, transplantation of other than homo sapiens (human) organs;

19. expenses subsequent to the initial diagnosis, for infertility and complications, including, but not limited to, services, drugs, and procedures or devices to achieve fertility; in-vitro fertilization, low tubal transfer, artificial insemination, intracytoplasmic sperm injection, embryo transfer, gamete transfer, zygote transfer, surrogate parenting, donor semen, donor eggs, and reversal of sterilization procedures;

20. air conditioners and/or filters, dehumidifiers, air purifiers, wigs or toupees, heating pads, cold devices, home enema equipment, rubber gloves, swimming pools, saunas, whirlpool baths, home pregnancy tests, lift chairs, devices or kits to stimulate the penis, exercise equipment, and any other items not normally considered medical supplies;

21. administrative fees, interest, penalties or sales tax;

22. marriage counseling and/or family relations counseling;

23. charges for services rendered over the telephone from a *physician* to a *covered person*;

24. radial keratotomy or any procedures for the correction of refractive errors;

25. speech therapy, except when ordered by a *physician* for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurological disease;

26. services and supplies related to obesity, surgery for excess fat in any area of the body, resection of excess skin or fat following weight loss or pregnancy;

27. hearing aids, or any examination to determine the fitting or necessity;

28. hair transplants;

29. routine physical examinations or immunizations not listed under eligible expenses;

30. diagnostic or *treatment* measures which are not recognized as generally accepted medical practice;

31. medical supplies not listed under eligible expenses;

32. *treatment* or services for mental health and substance abuse provided outside the *treatment* plan developed by the *program's* managed behavioral health care organization or by therapists with whom or at facilities with which the *program's* managed behavioral health care organization does not have a contract;

33. expenses for services rendered by a dentist or oral surgeon and any ancillary or related services, except for covered dental surgical procedures, dental procedures which fall under the guidelines of eligible dental accidents, procedures necessitated as a result of or secondary to cancer, or oral and maxillofacial surgeries which are shown to the satisfaction of the *program* to be *medically necessary*, non-dental, non-cosmetic procedures;

34. genetic testing, except when determined to be *medically necessary* during a covered pregnancy;

35. *treatment* for temporomandibular joint dysfunction (TMJ), except as listed under eligible expenses;

36. services of a private-duty registered nurse (R.N.) or of a private-duty licensed practical nurse (L.P.N.);

37. breast thermograms;

38. services rendered by any provider related to the patient by blood, adoption or marriage;

39. facility fees for services rendered in a *physician's* office or in any facility not approved by the federal Health Care Financing Administration for payment of such fees under *Medicare*;

40. glucometers;

41. services rendered by a non-participating provider, except *emergency services* as provided herein.

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 29:

### §319. Coordination of Benefits

A. Coordination of benefits is the order of payment when two or more plans are involved. When a patient is also covered by another plan, the plans will coordinate benefits.

B. Benefit *plan* is this *plan* or any one of the following:

1. group or employer sponsored *plan*;

2. group practice and other group prepayment *plan*;

3. other plans required or provided by law. This does not include Medicaid or any benefit plan that does not allow coordination.

C. Primary Plan and Secondary Plan

1. All benefits provided are subject to coordination of benefits.

2. Benefit *Plan* Payment Order

a. If an individual is covered by more than one plan, the order of *benefit payment* will follow guidelines established by the National Association of Insurance Commissioners, except for *Health Maintenance Organizations* or other types of employer-sponsored prepaid medical plans.

b. The plan that pays first will pay as if there were no other plan involved. The secondary and subsequent plans may pay the balance due up to 100 percent of the total allowable expense. No plan will pay benefits greater than it would have paid in the absence of coordination of benefits.

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 29:

### §321. Managed Care Option

A. The *program* may implement Managed Care Option (MCO) arrangements or other agreements to discount payable fees. The *program* reserves to itself the right to negotiate the amount of the discount, the incentives to be offered to *plan members* and all other provisions which are a part of any discount fee arrangement. To be eligible, the *program* must be the primary carrier at the time services are rendered. The only exception would be on a *covered person* with only *Medicare* Part A, who did not also have *Medicare* Part B. The Part B charges would be eligible for MCO benefits.

1. If a *covered person* obtains medical services or *hospital* services from an eligible provider who has agreed to provide the services at a mutually agreed upon discount from the maximum medical *fee schedule* or at a per diem or discounted rate from a *hospital*, the *program* will pay after applicable co-pays, as specified in the schedule of benefits. There is a contractual assignment to all MCO participating providers.

2. Point of Service MCO Regions (Areas)

a. The following regions are used to determine whether there is an MCO participating provider in the same area as the point of service

Region 1 - Zip Codes 70000 through 70199
Region 2 - Zip Codes 70300 through 70399
Region 3 - Zip Codes 70400 through 70499
Region 4 - Zip Codes 70500 through 70599
Region 5 - Zip Codes 70600 through 70699
Region 6 - Zip Codes 70700 through 70899
Region 7 - Zip Codes 71300 through 71499
Region 8 - Zip Codes 71000 through 71199
Region 9 - Zip Codes 71200 through 71299

b. If a *non-participating* provider is used, then no benefits are payable except for emergency services as provided herein.

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 29:

### §323. Prescription Drug Benefits

A. This *plan* allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor requiring a prescription and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a *covered person* as an inpatient *hospital* patient or an outpatient *hospital* patient, including insulin, Retin-A dispensed for *covered persons* under the age of 26, vitamin B12 injections, prescription potassium chloride, and over-the-counter diabetic supplies, including, but not limited to, strips, lancets, and swabs. In addition, this *plan* allows benefits, not to exceed \$200 per month, for expenses incurred for the purchase of low protein food products for the *treatment* of inherited metabolic diseases if the low protein food products are *medically necessary* and are obtained from a source approved by the OGB. Such expenses shall be subject to coinsurance and co-payments



relating to prescription drug benefits. In connection with this benefit, the following words shall have the following meanings.

1. *Inherited Metabolic Disease*—a disease caused by an inherited abnormality of body chemistry and shall be limited to:

- a. phenylketonuria (PKU);
- b. maple syrup urine disease (MSUD);
- c. methylmalonic acidemia (MMA);
- d. isovaleric acidemia (IVA);
- e. propionic acidemia;
- f. glutaric acidemia;
- g. urea cycle defects;
- h. tyrosinemia.

2. *Low Protein Food Products*—a food product that is especially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary *treatment* of an inherited metabolic disease. Low protein food products shall not include a natural food that is naturally low in protein.

B. The following drugs, medicines, and related services are not covered:

1. appetite suppressant drugs;
2. dietary supplements;
3. topical forms of Minoxidil;
4. Retin-A dispensed for a *covered person* over age 26;
5. amphetamines dispensed for diagnoses other than Attention Deficit Disorder or Narcolepsy;
6. nicotine, gum, patches, or other products, services, or programs intended to assist an individual to reduce or cease smoking or other use of tobacco products;
7. nutritional or parenteral therapy;
8. vitamins and minerals;
9. drugs available over the counter; and
10. serostim dispensed for any diagnoses or therapeutic purposes other than AIDS wasting;
11. drugs for *treatment* of impotence, except following surgical removal of the prostate gland; and
12. glucometers.

C. Outpatient prescription drug benefits are adjudicated by a third-party Pharmacy Benefits Manager with whom the *program* has contracted. In addition to all provisions, exclusions and limitations relative to prescription drugs set forth elsewhere in this *plan of benefits*, the following apply to expenses incurred for outpatient prescription drugs.

1. The *eligible expense* for a prescription drug is limited to the allowable cost of the generic drug, if a generic is available, and to the allowable cost for brand drugs identified on the Pharmacy Benefits Manager's list of preferred drugs, if generic is not available.

2. Upon presentation of the *OGB* health benefits identification card at a *participating pharmacy*, the *plan member* is responsible for payment of 50 percent of eligible expense, up to \$50 per prescription dispensed, and 100 percent of excess cost (over and above the *eligible expense*) at the point of purchase. The *plan* will pay the balance of the *eligible expense* for prescription drugs dispensed at a *participating pharmacy*.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (below).

3. In the event the *plan member* does not present the *OGB* health benefits identification card to the *participating pharmacy* at the time of purchase, or prescription drugs are purchased from a non-participating pharmacy, the *plan member* will be responsible for full payment for the drug cost. No benefits are payable by the plan, and the *plan member's* payment will not be applied toward satisfaction of the annual out-of-pocket threshold (below).

4. There is a \$1200 per person per *plan year* out-of-pocket threshold for *eligible expenses* for prescription drugs. Once this threshold is reached, that is, the *plan member* has paid \$1,200 of *eligible expenses* for prescription drugs, the *plan member* will be responsible for a \$15 co-pay for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs, with no co-pay for generic drugs. The *plan* will pay the balance of the eligible expense for prescription drugs dispensed at a *participating pharmacy*.

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 *eligible expense* for the drug, up to a maximum of \$50 per prescription dispensed, and 100 percent of excess cost.

ii. For a supply of 35-64 days the *plan member* will be responsible for payment of fifty percent of the *eligible expense* for the drug, up to a maximum of \$100 per prescription dispensed, and 100 percent of excess cost.

iii. For a supply of 69-102 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$150 per prescription dispensed, and 100 percent of excess cost.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out of pocket threshold (above).

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs 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. *Brand drug*—the trademark name of a drug approved by the U. S. Food and Drug Administration.

7. *Generic drug*—a chemically equivalent copy of a brand drug.

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 29:

## Chapter 4. Uniform Provisions

### §401. Statement of Contractual Agreement

A. This written *plan of benefits* as amended and any documents executed by or on behalf of the covered *employee* constitute the entire agreement between the parties.

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 29:

### §403. Properly Submitted Claim

A. For *plan reimbursements*, all bills must show:

1. employee's name;
2. name of patient;
3. name, address, and telephone number of the provider of care;
4. diagnosis;
5. type of services rendered, with diagnosis and/or procedure codes;
6. date of service;
7. charges;
8. *employee's* member number;
9. provider tax identification number;
10. *Medicare* explanation of benefits, if applicable.

B. The *program* can require additional documentation in order to determine the extent of coverage or the appropriate *reimbursement*. Failure to furnish the requested information will constitute reason for the denial of benefits.

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 29:

### §405. When Claims must be Filed

A. A claim for benefits must be received by the *program* within one year from the date on which the medical expenses were incurred.

B. The receipt date for electronically filed claims is the date on which the *program* receives the claim, not the date on which the claims is submitted to a clearinghouse or to the providers practice management system.

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 29:

### §407. Right to Receive and Release Information

A. The *program* may release to, or obtain from any company, organization, or person, without consent of or notice to any person, any information regarding any person which the *program* deems necessary to carry out the provisions of this *plan*, or like terms of any plan, or to determine how, or if, they apply. Any claimant under this *plan* must furnish to the *program* any information necessary to implement this provision.

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 29:

### §409. Legal Limitations

A. A *plan member* must exhaust the administrative claims review procedure before filing a suit for benefits. No action shall be brought to recover benefits under this *plan*

more than one year after the time a claim is required to be filed or more than 30 days after mailing of the notice of decision of the administrative claims *committee*, whichever is later.

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 29:

### §411. Benefit Payment to other Group Health Plans

A. When payments, which should have been made under this *plan*, have been made by another *group health plan*, the *program* may pay to the other plan the sum proper to satisfy the terms of this *plan of benefits*.

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 29:

### §413. Recovery of Overpayments

A. If an overpayment occurs, the *program* retains the right to recover the overpayment. The *covered person*, institution or provider receiving the overpayment must return the overpayment. At the *plan's* discretion, the overpayment may be deducted from future claims. Should legal action be required as a result of fraudulent statements or deliberate omissions on the application, the defendant will be responsible for attorney fees of 25 percent of the overpayment or \$1,000 whichever is greater. The defendant will also be responsible for court costs and legal interest from date of judicial demand until paid.

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 29:

### §415. Third Party Recovery Provision

A. Right of *Subrogation and Reimbursement*. When this provision applies, the *covered person* may incur medical or dental charges due to injuries which may be caused by the act or omission of a third party or a third party may be responsible for payment. In such circumstances, the *covered person* may have a claim against the third party, or insurer, for payment of the medical or dental charges. Accepting benefits under this *plan* for those incurred medical or dental expenses automatically assigns to the *program* any rights the *covered person* may have to recover payments from any third party or insurer. This right allows the *program* to pursue any claim which the *covered person* has against any third party, or insurer, whether or not the *covered person* chooses to pursue that claim. The *program* may make a claim directly against the third party or insurer, but in any event, the *program* has a lien on any amount recovered by the *covered person* whether or not designated as payment for medical expenses. This lien will remain in effect until the *program* is repaid in full. The *program* reserves the right to recover either from the liable third party or the *covered person*. The *covered person*:

1. automatically assigns to the *program* his or her rights against any third party or insurer when this provision applies;
2. must notify the *program* of a pending third-party claim; and

3. must repay to the *program* the benefits paid on his or her behalf out of the *recovery* made from the third party or insurer.

**B. Amount Subject to *Subrogation* or *Reimbursement***

1. The *covered person* agrees to recognize the *program's* right to *subrogation* and *reimbursement*. These rights provide the *program* with a priority over any funds paid by a third party to a *covered person* relative to the injury or sickness, including a priority over any claim for non-medical or dental charges, attorney fees, or other costs and expenses.

2. Notwithstanding its priority to funds, the *program's* *subrogation* and *reimbursement* rights, as well as the rights assigned to it, are limited to the extent to which the *program* has made, or will make, payments for medical or dental charges as well as any costs and fees associated with the enforcement of its rights under the *program*.

3. When a right of *recovery* exists, the *covered person* will cooperate and provide requested information as well as doing whatever else is needed to secure the *program's* right of *subrogation* and *reimbursement* as a condition to having the *program* make payments. In addition, the *covered person* will do nothing to prejudice the right of the *program* to subrogate or seek *reimbursement*.

4. This right of refund also applies when a *covered person* recovers under an uninsured or underinsured motorist plan, homeowner's plan, renter's plan, medical malpractice plan, worker's compensation plan or any liability plan.

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 29:

**§417. Employer Responsibility**

A. It is the responsibility of the Participant Employer to submit enrollment and change forms and all other necessary documentation on behalf of its employees to OGB. Employees of a *participant employer* will not by virtue of furnishing any documentation to OGB on behalf of a *plan member*, be considered agents of OGB, and no representation made by any such person at any time will change the provisions of this Plan.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the Re-employed Retiree category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a covered employee. If not timely forwarded to OGB, then OGB will assume responsibility only for Covered medical benefits due to Medicare, for a covered employee pursuant to this *plan of benefits*. The participant employer will be responsible for any interest, fines or penalties due.

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 29:

**§419. Program Responsibility**

A. The *program* will administer the *plan* in accordance with the terms of the *plan of benefits*, state and federal law, and its established policies, interpretations, practices, and procedures. It is the express intent of this *program* that the *board of trustees* will have maximum legal discretionary authority to construe and interpret the terms and provisions of the *plan*, to make determinations regarding issues which relate to eligibility for benefits, to decide disputes which may arise relative to *covered person's* rights, and to decide questions of *plan of benefits* interpretation and those of fact relating to the *plan of benefits*. The decisions of the *board of trustees* or its *committees* will be final and binding on all interested parties.

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 29:

**§421. Reinstatement to Position following Civil Service Appeal**

A. Indemnity Plan Participants. When coverage of a terminated *employee* who was a participant in the health indemnity plan is reinstated by reason of a civil service *appeal*, coverage will be reinstated to the same level in the health indemnity plan retroactive to the date coverage terminated. The *employee* and *participant employer* are responsible for the payment of all premiums for the period of time from the date of termination to the date of the final order reinstating the *employee* to his position. The *program* is responsible for the payment of all eligible benefits for charges incurred during this period. All claims for expenses incurred during this period must be filed with the *program* within 60 days following the date of the final order of reinstatement.

B. *Health Maintenance Organization* (HMO) Participants. When coverage of a terminated *employee* who was a participant in an HMO is reinstated by reason of Civil Service *appeal*, coverage will be reinstated in the HMO in which the *employee* was participating effective on the date of the final order of reinstatement. There will be no retroactive reinstatement of coverage and no premiums will be owed for the period during which coverage with the HMO was not effective.

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 29:

**§423. Plan of Benefits and/or Contract Amendments or Termination**

A. The *program* has the statutory responsibility of providing health and accident and death benefits for *covered persons* to the extent that funds are available. The *program* reserves to itself the right to terminate or amend the eligibility and benefit provisions of its *plan of benefits* from time to time as it may deem necessary to prudently discharge its duties. Termination or modifications will be promulgated subject to the applicable provisions of law, and nothing

contained herein shall be construed to guarantee or vest benefits for any participant, whether active or retired.

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 29:

## Chapter 5. Claims Review and Appeal

### §501. Administrative Review

NOTE: This Section establishes and explains the procedures for review of benefit and eligibility decisions by the *program*.

#### A. Administrative Claims Review

1. The *covered person* may request a review of any claim for benefits or eligibility. The written request must include the name of the *covered person*, member number, the name of the patient, the name of the provider, dates of service and should clearly state the reasons for the *appeal*.

2. The request for review must be submitted within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review organization or prescription benefits manager

#### B. Review and *Appeal* Prerequisite to Legal Action

1. The *covered person* must exhaust the administrative claims review procedure before filing a suit for benefits. Unless a request for review is made, the initial determination becomes final, and no legal action may be brought to attempt to establish eligibility or to recover benefits allegedly payable under the *program*.

#### C. Administrative Claims Committee

1. An administrative claims *committee* (the *committee*) will consider all such requests for review and to ascertain whether the initial determination was made in accordance with the *plan of benefits*.

#### D. Administrative Claims Review Procedure and Decisions

1. Review by the *committee* shall be based upon a documentary record which includes:

- a. all information in the possession of the *program* relevant to the issue presented for review;
- b. all information submitted by the *covered person* in connection with the request for review; and
- c. any and all other information obtained by the *committee* in the course of its review.

2. Upon completion of the review the *committee* will render its decision which will be based on the *plan of benefits* and the information included in the record. The decision will contain a statement of reasons for the decision. A copy of the decision will be mailed to the *covered person* and any representative thereof.

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 29:

### §503. Appeals from Medical Necessity Determinations

NOTE: The following provisions will govern appeals from adverse determinations based upon medical necessity by OGB's Utilization Review Organization (URO) pursuant to Article 3, Section IV of this document.

A. First Level Appeal. Within 60 days following the date of an adverse initial determination based upon medical necessity, the *covered person*, or the provider acting on behalf of the *covered person*, may request a first level *appeal*.

1. Each such *appeal* will be reviewed within the URO by a health care professional who has appropriate expertise.

2. The URO will provide written notice of its decision.

B. Second level review. Within 30-days following the date of the notice of an adverse decision on a first level *appeal*, a *covered person* may request a second level review.

1. Each such second level review will be considered by a panel within the URO that includes health care professionals who have appropriate expertise and will be evaluated by a clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed.

a. The review panel will schedule and hold a review meeting, and written notice of the time and place of the review meeting will be given to the *covered person* at least fifteen working days in advance.

b. The covered person may:

- i. present his/her case to the review panel;
- ii. submit supporting material and provide testimony in person or in writing or affidavit both before and at the review meeting; and
- iii. ask questions of any representative of the URO.

c. If face-to-face meeting is not practical the *covered person* and provider may communicate with the review panel by conference call or other appropriate technology.

2. The URO will provide written notice of its decision on the second level review.

C. External Review. Within 60 days after receipt of notice of a second level *appeal* adverse determination, the *covered person* whose medical care was the subject of such determination, with the concurrence of the treating health care provider, may submit request for an external review to the URO.

1. The URO will provide the documents and any information used in making the second level *appeal* adverse determination to its designated independent review organization.

2. The independent review organization will review all information and documents received and any other information submitted in writing by the *covered person* or the *covered person's* health care provider.

3. The independent review organization will provide notice of its recommendation to the URO, the *covered person*, and the *covered person's* health care provider.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

#### D. Expedited Appeals

1. An expedited *appeal* may be initiated by the *covered person*, with the consent of the treating health care professional, or the provider acting on behalf of the *covered person*, with regard to:

a. an adverse determination involving a situation where the time frame of the standard *appeal* would seriously jeopardize the life or health of a *covered person* or would jeopardize the *covered person's* ability to regain maximum function; or

b. any request concerning an admission, availability of care, continued stay, or health care service for a *covered*

person who has received emergency services but has not been discharged from a facility.

2. In an expedited *appeal* the URO will make a decision and notify the *covered person*, or the provider acting on behalf of the *covered person*, as expeditiously as the *covered person's* medical condition requires, but in no event more than seventy-two hours after the *appeal* is commenced.

3. The URO will provide written confirmation of its decision concerning an expedited *appeal* if the initial notification is not in writing.

4. In any case where the expedited *appeal* does not resolve a difference of opinion between the URO and the *covered person*, or the provider acting on behalf of the *covered person*, such provider may request a second level review of the adverse determination.

#### E. Expedited External Review of Urgent Care Requests

1. When the *covered person* receives an adverse determination involving an emergency medical condition of the *covered person* being treated in the emergency room, during *hospital* observation, or as a *hospital* inpatient, the *covered person's* health care provider may request an expedited external review.

2. The URO will transmit all documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or other available expeditious method.

3. Within 72 hours after receiving appropriate medical information for an expedited external review, the independent review organization will notify the *covered person*, the URO, and the *covered person's* health care provider of its decision to uphold or reverse the adverse determination.

4. An external review decision will be binding on the URO, on OGB and on the covered regarding the medical necessity determination.

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 29:

## Chapter 6. Definitions

### §601. Definitions

**Appeal**C a request for and a formal review by a *plan member* of a medical claim for benefits or an eligibility determination.

**Benefit Payment**C payment of eligible expenses incurred by a *covered person* during a *plan year* at the rate shown under percentage payable in the schedule of benefits.

**CEO**C the Chief Executive Officer of the *program*.

#### Children

1. any natural or legally adopted *children* of the *employee* and/or the *employee's* legal spouse dependent upon the *employee* for support;

2. any *children* in the process of being adopted by the *employee* through an agency adoption who are living in the household of the *employee* and who are or will be included as a *dependent* of the *employee's* federal income tax return for the current or next tax year (if filing is required);

3. other *children* for whom the *employee* has legal custody, who live in the household of the *employee*, and who are or will be included as a *dependent* on the *employee's*

federal income tax return for the current or next tax year (if filing is required);

4. grandchildren for whom the *employee* does not have legal custody, who are dependent upon the *employee* for support, and one of whose parents is a covered *dependent*. If the *employee* seeking to cover a grandchild is a paternal grandparent, the *program* will require that the biological father, i.e. the covered son of the *plan member*, execute an acknowledgement of paternity.

NOTE: If *dependent* parent becomes ineligible, the grandchild becomes ineligible for coverage, unless the *employee* has legal custody of the grandchild.

**COBRAC** federal continuation of coverage laws originally enacted in the Consolidated Omnibus Budget Reconciliation Act of 1985 with amendments.

**Committee**C the grievance *committee* of the board.

**Covered Person**C an active or retired *employee*, or his eligible *dependent*, or any other individual eligible for coverage for whom the necessary application forms have been completed and for whom the required contribution is being made.

**Custodial Care**C care designed essentially to assist an individual to meet his activities of daily living (i.e. services which constitute personal care such as help in walking, getting in and out of bed, assisting in bathing, dressing, feeding, using the toilet and care which does not require admission to the *hospital* or other institution for the *treatment* of a disease, illness, accident or injury, or for the performance of surgery; or, care primarily to provide *room and board* with or without routine nursing care, training in personal hygiene and other forms of self-care) and supervisory care by a doctor for a person who is mentally or physically incapacitated and who is not under specific medical, surgical or psychiatric *treatment* to reduce the incapacity to the extent necessary to enable the patient to live outside an institution providing medical care, or when, despite *treatment*, there is not reasonable likelihood that the incapacity will be so reduced.

**Date Acquired**C the date a *dependent* of a covered *employee* is acquired in the following instance and on the following dates only:

1. legal spouse-date of marriage;

2. children

a. natural *children*-the date of birth;

b. *children* in the process of being adopted:

i. agency adoption-the date the adoption contract was executed by the *employee* and the adoption agency;

ii. private adoption-the date of the execution of the act of voluntary surrender in favor of the *employee*, if the *program* is furnished with certification by the appropriate clerk of court setting forth the date of execution of the act and the date that said act became irrevocable, or the date of the first court order granting legal custody, whichever occurs first;

c. other *children* living in the household of the covered *employee* who are or will be included as a *dependent* on the *employee's* federal income tax return-the date of the court order granting legal custody.

d. grandchildren for whom the *employee* does not have legal custody, who are dependent upon the *employee* for support, and one of whose parents is a covered *dependent* as defined:

i. the date of birth, if all the requirements are met at the time of birth; or

ii. the date on which the coverage becomes effective for the covered *dependent*, if all the requirements are not met at the time of birth.

**Deductible** Cthe amount of covered charges for which no benefits will be paid. Before benefits can be paid in a *plan year*, a *covered person* must meet the *deductible* shown in the schedule of benefits.

**Dependent** Cany of the following persons who are enrolled for coverage as *dependents*, if they are not also covered as an *employee*:

1. the covered *employee's* legal spouse;
2. any (never married) *children* from date of birth (must be added to coverage within 30 days from *date acquired* by completing appropriate enrollment documents) up to 21 years of age, dependent upon the *employee* for support;
3. any unmarried (never married) *children* 21 years of age, but under 24 years of age, who are enrolled and attending classes as full-time students and who depend upon the *employee* for support. The term full-time student means students who are enrolled at an accredited college or university, or at a vocational, technical, or vocational-technical or trade school or institute, or secondary school, for the number of hours or courses which is considered to be full-time attendance by the institution the student is attending;

NOTE: It is the responsibility of the *plan member* to furnish proof acceptable to the *program* documenting the full-time student status of a *dependent* child for each semester.

4. any *dependent* parent of an *employee* or of an *employee's* legal spouse, if living in the same household, was enrolled prior to July 1, 1984, and who is, or will be, claimed as a *dependent* on the *employee's* federal income tax return in the current tax year. The *program* will require an affidavit stating the covered *employee* intends to include the parent as a *dependent* on his federal income tax return for the current tax year. Continuation of coverage will be contingent upon the payment of a separate premium for this coverage.

**Dependent Coverage** Cbenefits with respect to the *employee's dependents* only.

**Disability** Cthat the *covered person*, if an *employee*, is prevented, solely because of a disease, illness, accident or injury from engaging in his regular or customary occupation and is performing no work of any kind for compensation or profit; or, if a *dependent*, is prevented solely because of a disease, illness, accident or injury, from engaging in substantially all the normal activities of a person of like age in good health.

**Durable Medical Equipment** Cequipment which:

1. can withstand repeated use;
2. is primarily and customarily used to serve a medical purpose;
3. generally is not useful to a person in the absence of a illness or injury; and
4. is appropriate for use in the home. *Durable medical equipment* includes, but is not limited to, such items as wheelchairs, *hospital* beds, respirators, braces (non-dental) and other items that the *program* may determine to be *durable medical equipment*.

**Emergency** Ca medical condition of recent onset and severity which would lead a prudent lay person, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the health of a Covered Person (or unborn child if the Covered Person is a pregnant woman), serious impairment to bodily functions, or serious dysfunction of any bodily organ.

**Emergency Services** Cthose services medically necessary to screen, evaluate, and treat an Emergency.

**Employee** Ca full-time *employee* as defined by a *participant employer* in accordance with state law. No person appointed on a *temporary appointment* will be considered an *employee*.

**Employee Coverage** Cbenefits with respect to the *employee* only.

**Family Unit Limit** Cthe dollar amount shown in the schedule of benefits has been incurred by three members of a family unit toward their *plan year deductibles*. The *deductibles* of all additional members of that family unit will be considered satisfied for that year.

**Fee Schedule** COGB's schedule of maximum allowable charges for professional or *hospital* services.

**Future Medical Recovery** Cfrom another plan of expenses contemplated to be necessary to complete medical *treatment* of the *covered person*.

**Group Health Plan** Ca *plan* (including a self-insured *plan*) of, or contributed to by, an employer (including a self-employed person) or *employee* organization to provide health care (directly or otherwise) to the *employees*, former *employees*, the employer, others associated or formerly associated with the employer in a business relationship, or their families.

**Health Insurance Coverage** Cbenefits consisting of medical care (provided directly, through insurance or *reimbursement*, or otherwise) under any *hospital* or medical service policy or certificate, *hospital* or medical service plan contract, or HMO contract offered by a health insurance issuer. However, benefits described pursuant to the Health Insurance Portability and Accountability Act are not treated as benefits consisting of medical care.

**Health Maintenance Organization (HMO)** Cany legal entity, which has received a certificate of authority from the Louisiana Commissioner of Insurance to operate as a *health maintenance organization* in Louisiana.

**HIPAA** Cthe Health Insurance Portability and Accountability Act of 1996 (USA Public Law 104-191) and regulations promulgated pursuant thereto.

**Hospital** Can institution, which meets all the following requirements:

1. is currently a licensed as a *hospital* by the state in which services are rendered and is not primarily an institution for rest, the aged, the *treatment* of pulmonary tuberculosis, a nursing home, extended care facility or remedial training institution, or facilities primarily for the *treatment* of conduct and behavior disorders.

**Incurred Date** Cthe date upon which a particular service or supply is rendered or obtained. When a single charge is made for a series of services, each service will bear a prorated share of the charge.

**Inpatient Confinement**Ca hospital stay, which is equal to or exceeds 24 hours.

**Lifetime Maximum Benefit**Cthe total amount of benefits that will be paid under the *plan* for all eligible expenses incurred by a *covered person*.

**Medically Necessary**Ca service or *treatment* which, in the judgement of the *program*:

1. is appropriate and consistent with the diagnosis and which, in accordance with accepted medical standards, could not have been omitted without adversely affecting the patient's condition or the quality of medical care rendered; and

2. is not primarily *custodial care*.

**Medicare**Cthe health insurance available through *Medicare* laws enacted by the Congress of the United States.

**Occupational Therapy**Cthe application of any activity in which one engages for the purposes of evaluation, interpretation, *treatment* planning, and *treatment* of problems interfering with functional performance in persons impaired by physical illness or injury in order to significantly improve functioning.

**Office of Group Benefits (OGB)**-the agency of the State of Louisiana, within the Office of the Governor, Division of Administration, established by R.S. 42:801 and vested with the general administration of all aspects of programs of benefits as authorized or provided for under the provisions of Chapter 12 of Title 42 of the Louisiana Revised Statutes.

**Outpatient Surgical Facility**Can ambulatory surgical facility licensed by the state in which the services are rendered.

**Pain Rehabilitation Control and/or Therapy**Any program designed to develop the individual's ability to control or tolerate chronic pain.

**Participant Employer**Ca state entity, school board or a state political subdivision authorized by law to participate in the *program*.

**Participating Pharmacy**Ca pharmacy that participates in a network established and maintained by the Pharmacy Benefits Management firm with which the *program* has contracted to provide and administer outpatient prescription drug benefits.

**Participating Provider or MCO Participating Provider**Ca physician, hospital, or other health care provider that participates in the network established and maintained by *OGB* (or a firm with which *OGB* has contracted) to provide health care services to participant in this *plan*.

**Physical Therapy**Cthe evaluation of physical status as related to functional abilities and *treatment* procedures as indicated by that evaluation.

#### **Physician**C

1. **Physician** means the following persons, licensed to practice their respective professional skills by reason of statutory authority:

- a. doctor of medicine (M.D.);
- b. doctor of dental surgery (D.D.S.);
- c. doctor of dental medicine (D.M.D.);
- d. doctor of osteopathy (D.O.);
- e. doctor of podiatric medicine (D.P.M.);
- f. doctor of chiropractic (D.C.);
- g. doctor of optometry (O.D.);

h. psychologist meeting the requirements of the National Register of Health Service Providers in Psychology;

i. board certified social workers who are a members of an approved clinical social work registry or employed by the United States, the State of Louisiana, or a Louisiana parish or municipality, if performing professional services as a part of the duties for which he is employed;

j. mental health counselors who are licensed by the state in which they practice;

k. substance abuse counselors who are licensed by the state in which they practice.

2. The term *physician* does not include social workers, who are not board certified; interns; residents; or fellows enrolled in a residency training program regardless of any other title by which he is designated or his position on the medical staff of a *hospital*. A senior resident, for example, who is referred to as an assistant attending surgeon or an associate *physician*, is considered a resident since the senior year of the residency is essential to completion of the training program. Charges made by a *physician*, who is on the faculty of a state medical school, or on the staff of a state *hospital*, will be considered a covered expense if the charges are made in connection with the *treatment* of a disease, illness, accident or injury covered under this *plan*, and if the *physician* would have charged a fee for the services in the absence of this provision.

3. It is the specific intent and purpose of the *program* to exclude *reimbursement* to the *covered person* for services rendered by social workers who are not board certified; and intern, resident, or fellow enrolled in a residency training program regardless of whether the intern, resident, or fellow was under supervision of a *physician* or regardless of the circumstances under which services were rendered.

4. The term *physician* does not include a practicing medical doctor in the capacity of supervising interns, residents, senior residents, or fellows enrolled in a training program, who does not personally perform a surgical procedure or provide medical *treatment* to the *covered person*.

**Plan**Ccoverage under this contract including and comprehensive medical benefits, prescription drug benefits, and mental health and substance abuse benefits.

**Plan Member**Ca covered person other than a dependent.

**Plan Year**Cthat period commencing at 12:01 a.m., July 1, standard time, at the address of the *employee*, or the date the *covered person* first becomes covered under the *plan* and continuing until 12:01 a.m., standard time, at the address of the *employee* on the next following July 1. Each successive *plan year* will be the period from 12:01 a.m., July 1, standard time, at the address of the *employee* to 12:01 a.m., the next following July 1.

**Program**Cthe *Program* of employee benefits authorized by Chapter 12 of Title 42 of the Louisiana Revised Statutes and administered by the *Office of Group Benefits (OGB)*.

**Recovery**Cmonies paid to the *covered person* by way of judgment, settlement, or otherwise to compensate for all losses caused by the injuries or sickness whether or not said losses reflect medical or dental charges covered by the *program*.

**Referee**Ca hearing officer, employed or contracted by OGB, to whom an *appeal* may be referred for hearing.

**Rehabilitation and Rehabilitation Therapy**Ccare concerned with the management of patients with impairments of function due to disease, illness, accident or injury.

**Reimbursement**Crepayment to the *program* for medical or dental benefits that it has paid toward care and *treatment* of the injury or sickness.

**Rest Cure**Ccare provided in a sanitarium, nursing home or other facility and designed to provide *custodial care* and provide for the mental and physical well being of an individual.

**Retiree**Can individual who was a covered *employee*, immediately prior to the date of retirement and who, upon retirement:

1. immediately received retirement benefits from an approved state or governmental agency defined benefit plan; or

2. was not eligible for participation in such a plan or had legally opted to not participate in such a plan; and

a. began employment prior to September 15, 1979, has 10 years of continuous state service and has reached the age of 65; or

b. began employment after September 16, 1979, has 10 years of continuous state service and has reached the age of 70; or

c. was employed after July 8, 1992, has 10 years of continuous state service, has a credit for a minimum of 40 quarters in the Social Security system at the time of employment and has reached the age of 65; or

d. maintained continuous coverage with the program as an eligible *dependent* until he/she became eligible as a former state *employee* to receive a retirement benefit from an approved state governmental agency defined benefit plan; or

3. immediately received retirement benefits from a state-approved or state governmental agency-approved defined contribution plan and has accumulated the total number of years of creditable service which would have entitled him to receive a retirement allowance from the defined benefit plan of the retirement system for which the *employee* would have otherwise been eligible. The appropriate state governmental agency or retirement system responsible for administration of the defined contribution plan is responsible for certification of eligibility to the State Employees Group Benefits Program;

4. *retiree* also means an individual who was a covered *employee* who continued the coverage through the provisions of *COBRA* immediately prior to the date of retirement and who, upon retirement, qualified for any of items 1, 2, or 3, above.

**Room and Board**Call *hospital* expenses necessary to maintain and sustain a *covered person* during a confinement, including but not limited to, facility charges for the maintenance of the *covered person's hospital* room, dietary and food services, nursing services performed by nurses employed by or under contract with the *hospital* and housekeeping services.

**Stop Loss Provision**Crepresents the co-insurance amount for which the *plan member* is responsible. This amount does not include any *deductibles* or ineligible expenses. The *plan*

*member's* stop loss will be the difference between the *program's* payment and the eligible charge.

**Subrogation**Cthe *program's* right to pursue the *covered person's* claims for medical or dental charges against a liability insurer, a responsible party or the *covered person*.

**Temporary Appointment**Can appointment to any position for a period of 120 consecutive calendar days or less.

**Treatment**Cincludes consultations, examinations, diagnoses, and as well as medical services rendered in the care of a *covered person*.

**Well-Adult Care**Ca routine physical examination by a *physician* that may include an influenza vaccination, lab work and x-rays performed as part of the exam in that *physician's* office, and billed by that *physician* with wellness procedure and diagnosis codes. All other health services coded with wellness procedures and diagnosis codes are excluded.

**Well-Baby Care**Croutine care to a well newborn infant from the date of birth until age 1. This includes routine physical examinations, active immunizations, check-ups, and office visits to a *physician* and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness.

**Well-Child Care**Croutine physical examinations, active immunizations, check-ups and office visits to a *physician*, and billed by that *physician*, except for the *treatment* and/or diagnosis of a specific illness, from age 1 to age 16.

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 29:

## Chapter 7. Schedule of Benefits MCO §701. Comprehensive Medical Benefits

A. Eligible expenses for professional, technical, and facility services, prescription drugs, equipment, and supplies are reimbursed on the basis of a schedule of maximum allowable charges. In addition all eligible expenses are determined in accordance with plan limitations and exclusions.

1. No Lifetime Maximum Limitation on Benefits (except for Outpatient Prescription Drug Benefits and Durable Medical Equipment, below)

2. Member Co-payments

a. Inpatient Hospital Services	\$100 per day, maximum \$300 per admission
b. Hospital Emergency Room	\$100 (waived if admitted)
c. Outpatient Services (per visit/encounter)	
d. Physician services	\$15 Primary Care Physician \$25 Specialist1
e. Ambulatory Surgical Facility	\$100
f. Physical /Occupational Therapy2	\$ 15
g. Speech Therapy2	\$ 15
h. MRI/CAT SCAN2	\$ 50
i. Sonograms	\$ 25
j. Cardiac Rehabilitation (6-month limit)	\$ 15
k. Pre-Natal And Postpartum Maternity (one-time co-payment to include Physician delivery charge, all pre-natal, one postpartum visit)	\$ 90



l. Well Care Services	\$15
m. Home Health <sup>2</sup> (Limit 150 visits per Plan year)	\$ 15 per visit

<sup>1</sup>Primary Care Physicians are limited to General Practice, Internal Medicine, Family Practice, Ob-Gyn, and Pediatrics.  
<sup>2</sup>Prior authorization required.

### 3. Percentage Payable by the Plan after Co -Payments

a. Eligible expenses incurred for services of a participating MCO provider	100%
b. Eligible expenses incurred at a non-participating provider, except for emergencies as provided herein	0%
c. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%

#### B. Pharmacy Benefits

1. Lifetime Maximum for all Outpatient Prescription Drug Benefits, per person **C**\$250,000

2. Participating Pharmacy **C**Member pays 50 percent of eligible expense and 100 percent of excess cost at the point of purchase.

NOTE: Excess payments do not count toward the out of pocket threshold (below).

a. Eligible expense is limited generic drug cost, if generic is available, and to drugs identified on the Pharmacy Benefits Manager's list of preferred drugs, if generic is not available.

b. Maximum co-payment for Eligible expenses – \$50 per prescription dispensed.

c. No maximum co-payment for excess costs.

d. Out-of-pocket threshold **C**\$1,200 per person, per Plan Year (for eligible expenses ONLY). Co-pay after threshold is reached:

i. Brand **C**\$15,

ii. Generic **C**no co-pay

e. Plan pays balance of Eligible Expense.

3. Non-participating Pharmacy **C**Member pays 100%, no credit toward out-of-pocket threshold.

#### C. Durable Medical Equipment

1. Lifetime Maximum Benefit for Durable Medical Expenses, per person **C**\$50,000

2. Plan pays 80% of eligible expense.

#### D. Well Care Services

1. Well Baby Care (Birth to age 1) **C**Office visits for scheduled immunizations and screenings

2. Well Child Care

a. Age 1-2 **C**three (3) office visits per year for scheduled immunizations and screenings

b. Age 3-15 **C**one (1) office visit per year for scheduled immunizations and screenings

3. Well Adult Care **C**outine physical examination and associated laboratory and radiology

a. Age 16-39 **C**once during a 3-year period

b. Age 40-49 **C**once during a 2-year period

c. Age 50 and over **C**once during a 1-year period

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 29:

### **§703. Mental Health And Substance Abuse**

(Prior Authorization Required for all Services.)

#### A. Member Co -Payments

1. Inpatient Hospital Services	\$100 per day, maximum \$300 per admission
2. Outpatient Services	\$25 per visit

#### B. Benefits Limitations

1. Inpatient Hospital Services	Maximum of 45 inpatient days per person, per calendar year
2. Outpatient Services	Maximum of 52 outpatient visits per person, per Calendar Year, inclusive of the intensive outpatient program

NOTE: Two days of partial hospitalization or two days of residential treatment center hospitalization may be traded for each inpatient day of treatment that is available under the 45-day Calendar Year maximum for inpatient treatment. A residential treatment center is a 24-hour mental health or substance abuse, non-acute care treatment setting for active treatment interventions directed at the amelioration of the specific impairments that led to admission. Partial hospitalization is a level of care where the patient remains in the hospital less than 24 hours. Expenses incurred for emergency services will only be reimbursed if, after review, the services are determined to be a life-threatening psychiatric emergency resulting in an authorized mental health or substance abuse admission within 24 hours to an inpatient, partial, or intensive outpatient level care. Non-emergent psychiatric or substance abuse problems treated in the emergency room will not be eligible for reimbursement.

#### C. Percentage Payable by the Plan after Co -payments

1. Eligible expenses incurred for services of a participating MCO provider	100%
2. Eligible expenses incurred at a non-participating provider, except for emergencies as defined herein	0%
3. Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%

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 29:

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, La 70804, until 4:30 p.m. on Wednesday, April 30, 2003.

A. Kip Wall  
 Chief Executive Officer

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

#### **RULE TITLE: Managed Care Option (MCO) Plan of Benefits**

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

It is estimated by OGB's consulting actuary, Milliman, USA, that the addition of the Managed Care Option (MCO) will result in a cost avoidance to the State of Louisiana and Office of Group Benefits of avoidance to the State of Louisiana and Office of Group Benefits of approximately \$6.5 million for Fiscal Year 2003/22004. If overall medical inflation continues at 15 percent for the next several years, the cost avoidance for Fiscal Year 2004/2005 will be \$7.5 million and the cost avoidance for Fiscal Year 2005/2006 will be \$8.6 million. It is

anticipated that \$3,000 in printing costs will be incurred with the publishing of this rule.

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

Revenue collections of state and local governmental units will not be affected. This benefit option is being added to give members participating in the Office of Group benefits an additional health care option.

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

This rule allows the Office of Group Benefits to add an additional benefit option, the Managed Care Option (MCO). The MCO will give employees another health care option in addition to the PPO, EPO, and an HMO. Those members that choose (it is anticipated approximately 5,000 employees/retirees will choose this option) to select this option will pay a lower premium than if they enroll in any of the other health care options. They will have benefits that are very close to that of an HMO member, but will be subject to a strict formulary for Prescription Drugs and there will be no our of network benefits.

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

Competition and employment should not be affected.

A. Kip Wall  
Chief Executive Officer  
0303#075

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of State Purchasing**

**Procurement of Computer Equipment and Services  
(LAC 34:I.Chapter 55)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 39:199.C and D, the Office of the Governor, Division of Administration, Office of State Purchasing hereby gives notice of its intent to amend Rules relative to the purchase and lease of computer hardware and software; the procurement of hardware maintenance, software maintenance, and software support services; and the procedures for Procurement Support Team operations.

Further, the Office of State Purchasing proposes to repeal Rules relative to Emergency Procurement of Data Processing Equipment; Guidelines for Justification of Multi-Year Data Processing Leases; Unscheduled Maintenance of Data Processing Equipment; Procedures for Disposing of Leased, Rented or Purchased Data Processing Equipment; and Equipment Specifications in Solicitations, LAC 34:I.Appendix A.1-9:5, 1-9:6 and 1-9:7, 1-9:9, and 1-9:12, respectively.

The Office of the State Register will also renumber LAC 34:I.Appendix A to meet the APA mandate of prescribing "a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code." The following table should clarify the renumbering effort.

Former Section Number under Appendix A	New Section Number
New Material	5501
1-9:3	5503
1-9:4	5505, 5507, 5509, 5511
1-9:5	Repealed
1-9:6	Repealed
1-9:7	Repealed
1-9:8	5513
1-9:9	Repealed
1-9:12	Repealed

The text of this proposed Rule may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments until 5:00 p.m., April 21, 2003 to Denise Lea, Director, Office of State Purchasing, P.O. Box 94095, Baton Rouge, LA 70804-9095.

Denise Lea  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Procurement of Computer Equipment  
and Services**

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

There will be no estimated implementation cost to state or local governmental units beyond the initial publication cost.

For the past two decades, information technology services have been procured through non-competitive negotiations. These rules establish a framework in which services will be procured utilizing competitive tools. The Computer Consulting Services and Support Agreement (CSSA) is the most recent tool implemented. This new contracting method establishes base hourly pricing within six categories of services. Phase I of this project established the maximum hourly prices a contractor may charge while pricing is showing in excess of a 20 percent savings compared to hourly charges paid in the past. The state is expecting to realize additional savings in phase II however, it is too early to determine actual amounts.

Other methods of procurement that will be utilized will be the Invitation to Bid (ITB) for basic maintenance services not covered in the CSSA. Complex Services over one million dollars will be bid utilizing a Request for Proposal (RFP).

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

Implementation of the proposed rules should 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)**

There are no costs and/or economic benefits to directly affected persons or non-governmental groups. Any cost savings realized by the State in procuring hardware, software, maintenance and support services will result in less revenue to private entities that provide these items and services.

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

There rules should increase competition. No significant overall impact is anticipated in employment.

Denise Lea  
Director  
0303#076

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Disproportionate Share Hospital Payment Methodologies Final Payment and Small Rural Hospitals (LAC 50:V.301-315)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register, Volume 25, Number 5*). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register, Volume 29, Number 1*).

Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of uncompensated care reported by all qualified facilities as required by Senate Bill No. 883 of the 2001 Regular Session. Nothing shall be construed to impede or preclude the Department of Health and Hospitals from implementing the provisions in the Rural Hospital Preservation Act. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center-Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the findings and recommendations contained in the final reports of the study committees, the department proposes to amend the provisions governing disproportionate share hospital payments contained in the May 20, 1999 Rule.

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.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the May 20, 1999 Rule governing the disproportionate share payment methodologies as follows.

#### **Title 50**

#### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

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

#### **Subpart 1. Inpatient Hospitals**

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

#### **§301. General Provisions**

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

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

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

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

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

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the department. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

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

6. No additional payments shall be made to a hospital if an increase in cost is determined after audit.

7. Implementation of this Chapter 3 shall be subject to the approval of the Centers for Medicare and Medicaid Services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §303. Disproportionate Share Hospital Qualifications

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

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

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

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

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

a. Medicaid utilization rate is a fraction (expressed as a percentage); the numerator is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator is the total number of the hospital's inpatient days for a cost-reporting period. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage), the numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments, and the denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period; and

ii. the fraction (expressed as a percentage), the numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services; and the denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures

for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

c. hospitals shall be deemed disproportionate share providers eligible for reimbursement for inpatient services if their inpatient uninsured utilization rates are in excess of three percent:

i. inpatient uninsured utilization rate is a fraction (expressed as a percentage); the numerator is the total amount of the hospital's charges for inpatient services furnished to uninsured persons for the period, and the denominator is the total amount of the hospital's charges for inpatient services furnished to all persons for the period; or

d. hospitals shall be deemed disproportionate share providers eligible for reimbursement for outpatient services if their outpatient uninsured utilization rates are in excess of three percent:

i. outpatient uninsured utilization rate is a fraction (expressed as a percentage), the numerator is the total amount of the hospital's charges for outpatient services furnished to uninsured persons for the period, and the denominator is the total amount of the hospital's charges for outpatient services furnished to all persons for the period; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.1.a-h; and

6. in addition to the qualification criteria outlined in §303.A.1-5, effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least one percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §305. High Uninsured Utilization Rate Hospitals

A. Definitions

High Uninsured Utilization Rate Hospital  
Ca hospital that has an:

a. inpatient uninsured utilization rate of not less than 10 percent; or

b. outpatient uninsured utilization rate of not less than 20 percent.

*Net Uncompensated Cost*  
Cthe cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of Medicaid eligible persons. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals shall submit an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible and supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department.

C. DSH payments to individual high uninsured utilization rate hospitals shall be equal to 95 percent of the hospital's uncompensated costs subject to the adjustment provision in §301.B.1 and 3.

D. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall prioritize payments to high uninsured utilization rate hospitals and shall calculate a pro rata decrease for each high uninsured utilization rate hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured utilization rate hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients. Hospitals found to be in violation of this provision for equal access are subject to sanction by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §307. Low Uninsured Utilization Rate Hospitals

#### A. Definitions

*Low Uninsured Utilization Rate Hospital*—a hospital that has:

- a. an inpatient uninsured utilization rate of less than 10 percent; or
- b. an outpatient uninsured utilization rate of less than 20 percent.

*Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from net uncompensated cost are any costs for the care of Medicaid eligible persons. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals shall submit an attestation that patients whose care is included in the hospitals' net uncompensated cost are not Medicaid eligible and supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of hospitals' compliance with the Medicaid ineligibility requirement as required by the department.

C. DSH payments to individual low uninsured utilization rate hospitals shall be equal to 95 percent of the hospital's uncompensated costs subject to the adjustment provision in §301.B.1 and 3.

D. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each low uninsured utilization rate hospital based on the ratio determined by dividing that hospital's

uncompensated cost by the total uncompensated cost for all qualifying low uninsured utilization rate hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients. Hospitals found to be in violation of this provision for equal access are subject to sanction by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §309. High Medicaid Utilization Rate Hospitals

#### A. Definitions

*High Medicaid Utilization Rate Hospital*—a hospital that has a Medicaid utilization rate in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments.

a. Medicaid utilization rate is a fraction (expressed as a percentage), the numerator is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator is the total number of the hospital's inpatient days for a cost-reporting period.

*Net Uncompensated Cost*—the sum of the cost of furnishing inpatient and outpatient hospital services to Medicaid patients, net of Medicaid payments (excluding disproportionate share payments), and the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

a. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from the cost of furnishing inpatient and outpatient hospital services to uninsured persons are any costs for the care of Medicaid eligible persons. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals shall submit patient-specific demographic data that does not identify individuals but is sufficient for audit of hospitals' compliance with the Medicaid ineligibility requirement as required by the department.

B. Disproportionate share hospital payments to individual high Medicaid utilization rate hospitals shall be equal to 95 percent of the hospital's uncompensated costs subject to the adjustment provision in §301.B.1 and 3.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high Medicaid utilization rate hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high Medicaid utilization rate hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

D. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients. Hospitals found to be in violation of this provision for equal access are subject to sanction by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §311. Small Rural Hospitals

#### A. Definitions

1. *Small Rural Hospital*—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994, and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR 412.92(a); or

c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000;

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census.

2. *Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following two pools:

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.1.a-h, which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.1-2, that are privately owned.

C. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

D. The disproportionate share payments to each qualifying rural hospital shall continue to be equal to that hospital's pro rata share of uncompensated costs for all hospitals meeting these criteria for the cost reporting period ended during the period April 1, 2000 through March 31, 2001, multiplied by the amount set for this pool. Payment will not exceed each qualifying hospital's actual uncompensated costs or the amount appropriated. If the cost reporting period is not a full period (12 months), actual uncompensated cost data for the previous cost reporting period may be used on a pro rata basis to equate to a full year.

E. A pro rata decrease necessitated by conditions specified in §301.B.1 for rural hospitals described in this §311 will be calculated using the ratio determined by dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the department. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

F. Uncompensated costs to small rural hospitals for health care services provided in a rural health clinic that is licensed as part of the small rural hospital must meet the qualifying criteria contained in §303.A.6 and either §303.A.1, 2, or 3. In addition, qualifying hospitals must meet the definition for a small rural hospital contained in §311.A.1.a-h. Qualifying hospitals must maintain a log documenting the provision of uninsured care in the rural health clinic as directed by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §313. Public State-Operated Hospitals

#### A. Definitions

*Public State-Operated Hospital*—a hospital that is owned or operated by the State of Louisiana, Department of Health and Hospitals.

*Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and

all other inpatient and outpatient payments received from patients.

B. DSH payments to individual public state-owned or operated hospitals shall be equal to 100 percent of the hospital's net uncompensated costs. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

### §315. Psychiatric Hospitals

#### A. Definitions

*Psychiatric Hospital*—a freestanding psychiatric hospital that is not included in §313.

*Net Uncompensated Cost*—the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

B. DSH payments to individual freestanding psychiatric hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual freestanding psychiatric hospitals shall be calculated based on the product of the ratio determined by dividing each qualifying freestanding psychiatric hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified freestanding psychiatric hospitals, and multiplying by an amount of funds for freestanding psychiatric to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days.

D. A pro rata decrease necessitated by conditions specified in §301.B for freestanding psychiatric hospitals will be calculated based on the ratio determined by dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this Section 315, then multiplying by

the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Disproportionate Share Hospital Payment Methodologies C Final Payment and Small Rural Hospitals

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2003-04, and 2004-05. It is anticipated that \$1,296 (\$648 SGF and \$648 FED) will be expended in SFY 2002-03 for the states administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections. Specifically, the State will not exceed its limit of federal financial participation in disproportionate share payments (DSH).

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

It is anticipated that implementation of this proposed rule will change the DSH payment amount to some qualifying hospitals. Payments to small rural hospitals and hospitals owned and operated by the Department of Health and Hospitals (DHH) are anticipated to not change. Payments to state hospitals not owned and operated by DHH are anticipated to decrease and payments to non-state public and private hospitals (excluding small rural hospitals) are anticipated to increase as a result of the redefinition of qualifying hospitals (22).

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

It is anticipated that the proposed rules will improve the ability of non-state hospitals to compete with state hospitals for DSH payments. It is anticipated that such competition may have an adverse impact on employment in state hospitals to the

extent that DSH payments shift from state to non-state facilities.

Ben A. Bearden  
Director  
0303#061

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Medicaid Eligibility

#### Expansion of Coverage for Low Income Pregnant Women

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 1902(a)(10)(A)(i)(IV) and 1905(n)(2) of the Social Security Act requires states to provide Medicaid coverage to pregnant women whose pregnancy has been medically verified and whose family income is at or below 133 percent of the federal poverty level. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides coverage to low-income pregnant women in compliance with the minimum federal poverty level income allowed by regulations for pregnant women coverage. Income eligibility is based upon the current federal poverty level for the household size. Medicaid coverage for pregnant women is limited to prenatal care, delivery, 60 days of postpartum care and treatment for other conditions which may complicate the pregnancy. Under general Medicaid regulations, the agency has the option to provide coverage to low income pregnant women whose family income is up to, but no higher than, 185 percent of the federal poverty level.

Act 13 of the 2002 Regular Session of the Louisiana Legislature allocated funding for the eligibility determination costs associated with the expansion of Medicaid and the Louisiana Children's Insurance Program to provide coverage for pregnant women with family income not greater than 200 percent of the federal poverty level.

In compliance with Act 13 the department adopted an emergency Rule to amend the current provisions governing the eligibility income levels for coverage for low income pregnant women (*Louisiana Register, Volume 29, Number 1*). The department now proposes to continue the provisions contained in the January 1, 2002 emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will facilitate access to prenatal care for more low income pregnant women.

## Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the current provisions governing eligibility for low income pregnant women and expands coverage to include low income pregnant women with family income greater than 133 percent, but less than or equal to 185 percent of the federal poverty level (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid EligibilityC Expansion of Coverage for Low Income Pregnant Women

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

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$600,422 for SFY 2002-03, \$4,195,087 for SFY 2003-04, and \$4,404,753 for SFY 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$1,472,740 for SFY 2002-03, \$10,545,207 for SFY 2003-04, and \$11,072,244 for SFY 2004-2005.

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

Implementation of this proposed Rule will increase expenditures for services rendered to low income pregnant women by approximately \$2,073,000 for SFY 2002-03, \$14,740,294 for SFY 2003-04, and \$15,476,997 for SFY 2004-05. The anticipated economic benefit to directly affected persons is that low income pregnant women (approximately 5000), with income between 133 and 185 percent of the federal poverty level, who would have previously been ineligible, will now have access to Medicaid coverage.

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

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0303#057

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office



## NOTICE OF INTENT

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

Medicaid Eligibility  
Inclusion of the Unborn Child

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). Section H of the Medicaid Eligibility Manual contains the provisions governing the determination of eligibility. Under general Medicaid Rules, states are required to follow the same rules and processes used by the most closely related cash assistance program to determine Medicaid eligibility. The bureau currently utilizes the income methodologies of the former Aid to Families with Dependent Children (AFDC) Program to determine Medicaid eligibility for families and children.

Section 1902(r)(2) of the Social Security Act allows states to use less restrictive income and resource methodologies in determining eligibility for most Medicaid eligibility groups than the methodologies used by the cash assistance program. Current Medicaid eligibility policy does not consider an unborn child when establishing the household size for the determination of eligibility for families and children. In order to reduce the administrative burden for the Medicaid Program and assist in eliminating the financial hardship for low-income families, the department proposes to amend Section H of the Medicaid Eligibility Manual to consider the unborn child when determining Medicaid eligibility for other children in the home.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 as it will allow certain low-income families with children to become eligible for Medicaid benefits.

### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of Section H of the May 20, 1996 Rule governing the determination of Medicaid eligibility. Utilizing the provisions allowed under Section 1902(r)(2) of the Social Security Act, an unborn child shall be considered when establishing the household size for determination of Medicaid eligibility for other children in the household.

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Inclusion of the Unborn Child**

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

It is anticipated that the implementation of this proposed rule will increase state program costs by approximately \$2,282 for SFY 2002-03, \$89,114 for SFY 2003-04 and \$91,787 for SFY 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 and for the state administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$5,480 for SFY 2002-03, \$224,006 for SFY 2003-04 and \$230,727 for SFY 2004-2005.

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

Implementation of this proposed rule will increase expenditures for services rendered to Medicaid eligible children (approximately 250 at an average cost of \$1,216 per eligible) by approximately \$7,600 for SFY 2002-03, \$313,120 for SFY 2003-04 and \$322,514 for SFY 2004-05. It is anticipated that the proposed rule will have an economic benefit for directly affected families in that inclusion of the unborn child will allow the other children in the household to become eligible for Medicaid coverage during the mother's pregnancy.

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

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0303#059

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Medicaid Eligibility  
Income Disregards for Low Income Pregnant Women

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently utilizes the income methodologies of the former Aid to Families with Dependent Children (AFDC) Program to determine Medicaid eligibility for families and children. Under general Medicaid rules, States are required to follow the same rules and processes used by the most closely related cash assistance program to determine Medicaid eligibility.

Under Section 1902(r)(2) of the Social Security Act, States are allowed to use less restrictive income and resource methodologies in determining eligibility for most Medicaid eligibility groups than are used by the cash assistance program. Under current Medicaid eligibility policy for low income pregnant women, income eligibility is based upon the current federal poverty level for the household size. The total countable income of all members of the income unit is compared to the appropriate income standard for the income unit size.

Act 13 of the 2002 Regular Session of the Louisiana Legislature provided additional funding for eligibility determination costs associated with the expansion of Medicaid and the Louisiana Children's Insurance Program to provide coverage for pregnant women with family income not greater than 200 percent of poverty level.

In compliance with Act 13 and in order to reduce administrative burden for the Medicaid Program and reduce financial hardship for low income pregnant women, the Bureau adopted an Emergency Rule to amend Section I of the Medicaid Eligibility Manual to disregard the first 15 percent of monthly gross income under the federal poverty level standards when determining Medicaid eligibility for low income pregnant women (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act)(*Louisiana Register Volume 29, Number 1*). The department now proposes to continue the provisions contained in January 1, 2003 Emergency Rule.

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 will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972, by increasing the availability of health care coverage to low income women.

### **Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the

current policy governing countable income in the determination of Medicaid eligibility for low income pregnant women.

Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, the department disregards the first 15 percent of monthly gross income under the federal poverty level standards when determining Medicaid eligibility for low income pregnant women (Section 1902(a)(10)(A)(i)(I), 1902(1)(1)(A) of the Social Security Act).

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Income Disregards for Low Income Pregnant Women**

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

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$96,627 for SFY 2002-03, \$670,752 for SFY 2003-04, and \$704,511 for SFY 2004-05. It is anticipated that \$162 (\$81 SGF and \$81 FED) will be expended in SFY 2002-2003 for the states administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$236,913 for SFY 2002-03, \$1,686,072 for SFY 2003-04, and \$1,770,934 for SFY 2004-2005.

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

Implementation of this proposed Rule will increase expenditures for medical services rendered to low income pregnant women by approximately \$333,378 for SFY 2002-03, \$2,356,824 for SFY 2003-04, and \$2,475,445 for SFY 2004-05. The anticipated economic benefit to directly affected persons is that low income pregnant women (approximately 5000), who would have previously been ineligible, will now have access to Medicaid coverage as the proposed Rule will allow the department to disregard the first 15 percent of countable income under the federal poverty level standards when determining Medicaid eligibility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0303#058

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Medicaid Eligibility  
Pregnant Unmarried Minors CDisregard of Parent Income

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). Section I of the Medicaid Eligibility Manual addresses the eligibility factors considered in the determination of eligibility. Under general Medicaid Rules, states are required to follow the same Rules and processes used by the most closely related cash assistance program to determine Medicaid eligibility. The bureau currently utilizes the income methodologies of the former Aid to Families with Dependent Children (AFDC) Program to determine Medicaid eligibility for families and children.

Section 1902(r)(2) of the Social Security Act allows states to use less restrictive income and resource methodologies in determining eligibility for most Medicaid eligibility groups than the methodologies used by the cash assistance program.

In order to reduce the administrative burden for the Medicaid Program and assist in eliminating financial hardship for the families of pregnant unmarried minors, the Department proposes to amend Section I of the Medicaid Eligibility Manual to disregard the income of the parents in determining the Medicaid eligibility of a pregnant unmarried minor. Under current Medicaid eligibility policy for families and children, the parents of a pregnant unmarried minor who live in the home with the pregnant unmarried minor are mandatory members of the income unit and their income must be considered in determining Medicaid eligibility.

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 will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972. The proposed Rule will assist in eliminating financial hardship for the families of pregnant unmarried minor.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the May 20, 1996 Rule governing countable

income in the determination of Medicaid eligibility for pregnant unmarried minors.

Utilizing provisions allowed under Section 1902(r)(2) of the Social Security Act, the income of the parents who live in the home with a pregnant unmarried minor will be disregarded in the determination of Medicaid eligibility for the pregnant unmarried minor.

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

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

**RULE TITLE: Medicaid Eligibility  
Pregnant Unmarried Minors CDisregard of  
Parent Income**

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

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$16,518 for SFY 2002-03, \$664,412 for SFY 2003-04 and \$684,347 for SFY 2004-05. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$40,362 for SFY 2002-03, \$1,670,145 for SFY 2003-04 and \$1,720,247 for SFY 2004-2005.

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

Implementation of this proposed Rule will increase expenditures for services rendered to pregnant unmarried minors (approximately 748 at an average cost of \$3,031 per eligible) by approximately \$56,664 for SFY 2002-03, \$2,334,557 for SFY 2003-04 and \$2,404,594 for SFY 2004-05. It is anticipated that implementation of this proposed Rule will have an economic benefit for the parents of pregnant unmarried minors in that they will not have to incur the expense for prenatal and postpartum care.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0303#058

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Medicaid Eligibility Treatment of Annuities

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule promulgating the *Medicaid Eligibility Manual* in its entirety by reference in May of 1996 (*Louisiana Register, Volume 22, Number 5*). Section I of the *Medicaid Eligibility Manual* addresses the eligibility factors considered in the determination of eligibility.

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 amended Section 1917(c) of the Social Security Act and established Section 1917(d) to set forth Rules wherein transfers of assets and trusts must be considered in determining eligibility for Medicaid. Current Medicaid eligibility rules are not clear relative to the consideration of annuities in the eligibility determination process. The policy does not clearly state that an annuity is considered a legal instrument or device similar to a trust.

In order to comply with the Omnibus Budget Reconciliation Act of 1993 and curb abuse in the transfer of assets, the Bureau adopted an Emergency Rule to amend Section I of the *Medicaid Eligibility Manual* in order to clarify current policy regarding annuities (*Louisiana Register, Volume 29, Number 1*). The Bureau now proposes to adopt a Rule to continue the provisions contained in the January 1, 2003 emergency rule.

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.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends current Medicaid eligibility policy governing the transfer of assets and trusts to further define and clarify the consideration of annuities in the Medicaid eligibility determination process.

An annuity is considered a legal instrument or device similar to a trust. An annuity is defined as a contract or agreement by which one receives fixed, non variable payments on an investment for a lifetime or a specified number of years. An annuity containing a balloon payment will not be classified as an annuity for Medicaid eligibility purposes, but rather will be considered an available resource. A commercial (non-employment related) annuity purchased by or for an individual using that individual's assets will be

considered an available resource unless it meets all of the following criteria. The annuity:

1. is irrevocable;
2. pays out principal and interest in equal monthly installments (no balloon payment) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the annuitant;
3. names the state of Louisiana, Department of Health and Hospitals or its successor agency as the residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the individual during his lifetime; and
4. is issued by an insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

This policy change shall be applicable to all pending applications, renewals of eligibility or changes in situations (as defined in Section L of the Medicaid Eligibility Manual) where the applicant/recipient has an annuity. Existing annuities which do not meet all of the above criteria must be amended to comply with these requirements within 90 days of the first renewal or first change in their situation (as defined in Section L of the Medicaid Eligibility Manual) occurring after enactment of this Rule.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid Eligibility Treatment of Annuities

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

It is anticipated that the implementation of this proposed rule will decrease state program costs by approximately \$1,222,598 for SFY 2002-03, \$2,475,287 for SFY 2003-04, \$2,549,545 for SFY 2004-05. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended in SFY 2002-03 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will decrease federal revenue collections by

approximately \$2,999,236 for SFY 2002-03, \$6,222,136 for SFY 2003-04 and \$6,408,801 for SFY 2004-05.

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

It is anticipated that this proposed Rule will reduce the number of eligible Medicaid clients by curbing abuse in the transfer of assets. This proposed Rule amends current Medicaid eligibility policy governing the transfer of assets and trusts to further define and clarify the consideration of annuities in the Medicaid eligibility determination process. It is anticipated that the implementation of this proposed Rule will decrease program expenditures for services (for approximately 350 applicants/recipients) by approximately \$4,222,050 for SFY 2002-03, \$8,697,423 for SFY 2003-04 and \$8,958,346 for SFY 2004-05.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0303#055

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Mentally Retarded/Developmentally Disabled Waiver  
Skilled Nursing Services**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Under the provisions of Section 1915(c) of the Social Security Act, states may provide services not generally reimbursable by the Medicaid Program to groups of individuals in the community who meet the qualifications for institutional care. Such programs are known as home and community based services waivers. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in July 1990 establishing the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver and the provisions governing the services covered under the waiver (*Louisiana Register, Volume 16, Number 7*). The MR/DD Waiver is one of the five waivers that are currently administered by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services.

The Bureau of Community Supports and Services has determined that it is necessary to incorporate a new service into the MR/DD Waiver. The Centers for Medicare and Medicaid Services approved a waiver amendment to add skilled nursing services to the list of services provided under the MR/DD Waiver and the Bureau promulgated an emergency rule to include this service (*Louisiana Register, Volume 28, Number 11*). The bureau now proposes to continue the provisions of the November 1, 2002 emergency rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972. This Rule should have a positive effect on family functioning by allowing individuals served by the MR/DD waiver to receive skilled nursing services.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the July 20, 1990 Rule to include skilled nursing services as a service in the Mentally Retarded/Developmentally Disabled Waiver.

**Recipient Criteria**

A. Skilled nursing services will be available to medically fragile individuals who meet the following criteria:

1. are ventilator dependent or non-ambulatory, or have undergone a tracheotomy, or gastrostomy; and
2. require life-sustaining equipment (ventilators, suction machines, apnea monitors, nebulizers and/or pulse oximeters); and
3. are medically approved by their primary physician, as documented by a doctor's order and a letter of medical necessity from the physician.

**Provider and Staff Qualifications**

A. A home health agency must enroll as a MR/DD Waiver service provider in order to provide skilled nursing services under the MR/DD Waiver.

B. Skilled nursing services shall be provided by either a licensed registered nurse or a licensed practical nurse employed by a Medicaid enrolled home health agency.

Interested persons may submit written comments to Barbara Dodge at the Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

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

**RULE TITLE: Mentally Retarded/Developmentally  
Disabled Waiver Skilled Nursing Services**

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

It is anticipated that the implementation of this proposed rule will increase state program costs by approximately \$282,701 for SFY 2002-03, \$429,068 for SFY 2003-04, and \$441,941 for SFY 2004-05. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended in SFY 2002-2003 for the states administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$693,321 for SFY 2002-03, \$1,078,552 for SFY 2003-04, and \$1,110,908 for SFY 2004-05.

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

This proposed rule would benefit recipients by adding skilled nursing services to the list of services provided under the Mentally Retarded/Developmentally Disabled Waiver. Implementation of this proposed rule will increase program expenditures by approximately \$975,806 for SFY 2002-03, \$1,507,620 for SFY 2003-04, and \$1,552,849 for SFY 2004-05. The above estimates are based on providing services to approximately 22 recipients at an average cost of \$66,532 per recipient.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known estimated effect on competition. However, this proposed rule could result in increased employment opportunities for registered nurses and licensed practical nurses.

Ben A. Bearden  
Director  
0303#060

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Nursing Facility Services C Standards for Payment  
Ventilator Dependent Care C Requirements for Payments  
(LAC 50:II.10155)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in January of 1996 that established standards for payments for nursing facility services. (*Louisiana Register, Volume 22, Number 1*). Subsection 10155.S of the Rule contains provisions governing skilled nursing – technology dependent care (SN-TDC). Currently, nursing facilities that provide SN-TDC services for children are required to establish a protocol for outpatient follow-up, case management and ongoing staff training through a close working relationship with Children’s Hospital or other acute care referral sources. The Department proposes to amend Subparagraph 10155.S.2.u of the standards for payment to require nursing facilities that provide ventilator dependent care services to Medicaid recipients from birth through age 25 to attend specialized training for this level of care.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed

Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, as described in R.S. 49:942 by improving the quality of care rendered to technology dependent recipients in nursing facilities.

The Department of Health and Hospitals, Bureau of Health Services Financing amends the January 20, 1996 Rule governing the standards for payment for nursing facility services.

**Title 50**

**PUBLIC HEALTH MEDICAL ASSISTANCE**

**Part II. Medical Assistance Program**

**Subpart 3. Standards for Payment**

**Chapter 101. Nursing Facilities C Standards for Payment**

**Subchapter G. Levels of Care**

**§10155. Standards of Levels of Care**

A. - S.2.t. ...

u. require staff to attend specialized training on ventilator assisted care if the facility provides SN-TDC services to Medicaid recipients from birth through age 25. The training will be conducted by a contractor designated by the department. The facility shall also cooperate with ongoing monitoring conducted by the contractor. Training content includes:

- i. the special health needs of, and risks to ventilator-dependent recipients;
- ii. the proper use and maintenance of equipment in use or new to the facility;
- iii. current, new, or unusual health procedures and medications;
- iv. diagnoses and treatments specific to pediatrics and in the development and nutritional needs of recipients;
- v. emergency intervention;
- vi. accessing school services for ventilator-assisted recipients; and
- vii. discharge planning where families express interest in a recipient returning home.

S.2.v. - T. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 January 1996), amended LR 23:970 (August 1997), LR 29:

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

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

**RULE TITLE: Nursing Facility Services  
Standards for Payment Ventilator Dependent  
Care Requirement for Payments**

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

It is anticipated that the implementation of this proposed Rule will increase state fund expenditures \$12,500 for SFY 2003-04, \$12,500 for SFY 2004-05 and \$12,500 for SFY 2005-2006. It is anticipated that \$216 (\$108 SGF and \$108 FED) will be expended for the state's administrative expense for promulgation of this proposed Rule and the final Rule in SFY 2002-03.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by \$12,500 for SFY 2003-04, \$12,500 for SFY 2004-05, and \$12,500 for SFY 2005-2006.

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

Implementation of this proposed Rule will provide reimbursement for a professional services contract for training, technical assistance, and monitoring of nursing facility staff who provide care to ventilator dependent residents within a specified age range. Implementation of this proposed Rule will increase expenditures by approximately \$25,000 for SFY 2003-04, \$25,000 for SFY 2004-05, and \$25,000 for SFY 2005-2006.

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

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0303#061

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Private Hospitals Outlier Payments**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established a reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children under six years of age (*Louisiana Register, Volume 20, Number 6*). The reimbursement methodology also addressed payments to all acute care hospitals for catastrophic costs associated with providing medically

necessary services to infants one year of age or under. An outlier payment is calculated on an individual case basis and paid at cost if covered charges for medically necessary services exceeds 200 percent of the prospective payment.

The June 20, 1994 rule was subsequently amended to revise the qualification and calculation for outlier payments (*Louisiana Register, Volume 22, Number 2*). To qualify for an outlier payment, the covered charges for the case must exceed both \$150,000 and 200 percent of the prospective payment. Outlier cases qualifying under these criteria are reimbursed the marginal cost associated with the excess cost above the prospective payment amount. As a result of the allocation of funds by the Legislature during the 2002 Regular Session, the bureau adopted an Emergency Rule that reduced the outlier payments made to private hospitals by amending the definition of marginal cost contained in the February 20, 1996 Rule (*Louisiana Register, Volume 28, Number 7*). In addition, the base period for the hospital specific cost-to-charge ratio that is utilized for the calculation of outlier payments was changed and a deadline was established for receipt of the written request filing for outlier payments. The bureau now proposes to adopt a Rule to continue the provisions contained in the July 1, 2002 Emergency Rule.

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.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the February 20, 1996 rule by changing the definition of marginal cost. The marginal cost factor for outliers shall be considered to be 100 percent of costs after the costs for the case exceed the hospital's prospective payment. In addition, the Bureau amends the reimbursement methodology for calculating outlier payments for private hospitals by changing the hospital specific cost-to-charge ratio from the base period currently being utilized to a hospital specific cost-to-charge ratio based on the hospital's cost report period ending in state fiscal year (SFY) 2000 (July 1, 1999 through June 30, 2000). The cost-to-charge ratio for new hospitals and hospitals that did not provide Medicaid Neonatal Intensive Care Unit (NICU) services in SFY 2000 will be calculated based on the first full year cost reporting period that the hospital was open or that Medicaid NICU services were provided. Outlier payments are not payable for transplant procedures as transplants are not reimbursed on a prospective basis.

A deadline of six months subsequent to the date that the final claim is paid is established for receipt of the written request filing for outlier payments.

The hospital specific cost-to-charge ratio will be reviewed bi-annually and the outlier payment may be adjusted as a result of this review at the discretion of the secretary. Upon adoption of the Rule, hospitals shall receive notification of an impending change to the hospital specific outlier payment by means of a letter sent directly to the hospital.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Friday, April 25, 2003 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Private Hospitals Outlier Payments**

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

It is anticipated that the implementation of this proposed rule will decrease state program costs by approximately \$1,770,900 for SFY 2002-03, \$1,792,672 for SFY 2003-04, and \$1,846,452 for SFY 2004-05. It is anticipated that \$270 (\$135 SGF and \$135 FED) will be expended in SFY 2002-03 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will decrease federal revenue collections by approximately \$4,344,283 for SFY 2002-03, \$4,506,245 for SFY 2003-04, and \$4,641,432 for SFY 2004-05.

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

Implementation of this proposed rule will reduce the outlier payments to private hospitals through a revision in the reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children under six years of age. The reimbursement methodology also addresses payments to all acute care hospitals for catastrophic costs associated with providing medically necessary services to infants one year of age or under. This proposed rule will decrease reimbursement by approximately \$6,115,453 for SFY 2002-03, \$6,298,917 for SFY 2003-04, and \$6,487,884 for SFY 2004-05.

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

There is no known effect on competition and employment.

Ben A. Bearden  
Director  
0303#063

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

**Pipeline Safety Definitions  
(LAC 43:XIII.125)**

The Louisiana Office of Conservation hereby proposes to promulgate new definitions for master meter, school and special class gas systems in LAC 43:XIII.125 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana, particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 30:557.G. The proposed new and amended definitions will clarify pipeline safety responsibilities of master meter, school and special class gas system operators.

**Title 43**

**NATURAL RESOURCES**

**Part XIII. Office of Conservation—Pipeline Safety**

**Subpart 1. General Provisions**

**Chapter 1. General**

**§125. Definitions**

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*Master Meter System*Ca pipeline system for distributing gas within, but not limited to, a definable area such as a mobile home park, housing project, apartment complex or university, where the operator purchases metered gas from an outside source for resale through a gas pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

\*\*\*

*Special Class System*Ca pipeline system for distributing gas to a federal, state or local government facility or a private facility performing a government function, where the operator receives or purchases gas from an outside source, and distributes the gas through a pipeline system to more than one outlet beyond the meter or regulator, which ultimate outlet may, but need not be, individually metered or charged a fee for the gas. Any exemption from pipeline safety regulation granted to master meter systems will apply to Special Class Systems.

\*\*\*

*School System*Ca pipeline system for distributing natural gas to a public or private pre-kindergarten, kindergarten, elementary, secondary, or high school. Upon request for a revision of service by the school, or by the school system of which the school is a component, the local distribution company providing natural gas service to the school shall install a meter at the building wall of each building of the school that utilizes natural gas. The gas piping from the outlet of the meter to the inside of the building shall be installed above ground, and shall be maintained by the school in accordance with requirements of the Office of the State Fire Marshal. The outside piping that is upstream of the meter to the outlet of the meter shall be owned and maintained by the local distribution company in accordance



with Minimum Pipeline Safety Regulations. The pipeline system of a school that does not request the revision of service described by this paragraph shall be deemed a Special Class System, and subject to the requirements of such system.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), amended LR 29:

#### Family Impact Statement

1. The effect of these Rules on the stability of the family. These Rules will have no effect on the stability of the family.

2. The effect of these Rules on 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. The effect of these rules on the functioning of the family. These Rules will have no effect on the functioning of the family.

4. The effect of these rules on family earnings and family budget. These Rules will have no effect on family earnings and family budget.

5. The effect of these rules on family earnings and family budget. These Rules will have no effect on the functioning of the family.

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. These Rules will have not effect on the ability of the family or local government to perform the function as contained in the proposed Rules.

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 30:557.G, notice is hereby given that the commissioner of Conservation will conduct a public hearing at 9 a.m., Monday, April 28, 2003, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA. A copy of the proposed regulations may be obtained by contacting Mariano Hinojosa at 225-342-5519 or by writing the Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804.

All interested parties will be afforded the opportunity to submit comments regarding these new and amended regulations at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 5 p.m., Monday, May 5, 2003, at the following address: Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804, Re: Docket No. PL 03- 004.

All persons having interest in the aforesaid shall take notice thereof.

James H. Welsh  
Commissioner of Conservation

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

##### RULE TITLE: Pipeline Safety Definitions

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

There should be no additional costs or savings regarding the amendment of this Rule. This action amends and adopts

pipeline safety definitions regarding master meter, special class and school natural gas installations.

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

The effect on state revenue collections will be minimal. Currently, every private and public school pays an annual pipeline safety inspection fee of \$15 per school. Under the proposed Rule, schools may request a revision of service and thereby opt out of pipeline safety jurisdiction and avoid the annual pipeline safety fee. It is estimated that 1,000 public and private schools will convert their gas facilities and opt out of pipeline safety jurisdiction.

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

Schools that request a revision of gas service will incur conversion costs to install gas service lines and gas meters at each building. The total cost will vary from school to school. The estimated average cost per school is \$2,000. However, all schools that request such a revision of service will realize an annual savings of approximately \$2,000 per year. The savings are the avoided cost of leak surveys, reports, and Operations and Maintenance Plans.

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

There should be no significant effect on competition or employment. The private entities that provide services and reports, which the schools would no longer require, would experience reduced revenues equivalent to the savings realized by schools.

James H. Welsh  
Commissioner  
0303#028

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

#### Department of Natural Resources Office of Conservation

##### Surface Mining

(LAC 43:XV.105, 1105-1109, 2111, 2113, 2311, 2323, 2731, 2733, 3103, 3115, 3705, 5423, 5424 and 5425)

Under the authority of the Louisiana Surface Mining and Reclamation Act, particularly R.S. 30:901 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Office of Conservation proposes to adopt rules and regulations to amend LAC 43:XV, (Statewide Order 29-O-1) the Louisiana Surface Mining Regulations, governing valid existing rights and revegetation success standards for post-mining land uses of pastureland and wildlife habitat.

The Department of the Interior, Office of Surface Mining Reclamation and Enforcement, under the provisions of 30 CFR 732.17(d), has notified the Louisiana Office of Conservation, Injection and Mining Division of changes in Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and the federal regulations promulgated pursuant to SMCRA which make it necessary for Louisiana to modify its Surface Mining Regulatory Program to remain consistent with all federal regulations. The director of the Office of Surface Mining Reclamation and Enforcement approved the proposed amendments in *Federal Register*, Vol. 67, No. 38, February

**Title 43**

**NATURAL RESOURCES**

**Part XV. Office of Conservation - Surface Mining**

**Subpart 1. General Information**

**Chapter 1. General**

**§105. Definitions**

A. ...

\* \* \*

*Valid Existing Rights*Ca set of circumstances under which a person may, subject to office approval, conduct surface coal mining operations on lands where §922.D of the Act and §1105 of these regulations would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of §1105 of these regulations or §922.D of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the act and the regulatory program.

a. Property Rights Demonstration. Except as provided in §105.*Valid Existing Rights*.c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of §922.D of the Act or §1105 of these regulations. Applicable state law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

b. Except as provided in §105.*Valid Existing Rights*.c, a person claiming valid existing rights also must demonstrate compliance with one of the following standards.

i. Good Faith/All Permits Standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. At a minimum, an application must have been submitted for any permit required under Subpart 3 of these regulations.

ii. Needed for and Adjacent Standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of §922.D of the Act or §1105 of these regulations. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §922.D of the Act or §1105 of these regulations. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of §922.D of the Act or §1105 of these regulations when the office approved the permit for the original operation or when

the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the office may consider factors such as:

(a). the extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of §922.D of the Act or §1105 of these regulations depend upon use of that land for surface coal mining operations;

(b). the extent to which plans used to obtain financing for the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations;

(c). the extent to which investments in the operation before the land came under the protection of §922.D of the Act or §1105 of these regulations rely upon use of that land for surface coal mining operations; and

(d). whether the land lies within the area identified on the life-of-mine map submitted under §2535.A.3 before the land came under the protection of §1105.

a. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by §1105 of these regulations or §922.D of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of surface coal mining operations in §105:

i. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the person has a legal right to use the road for surface coal mining operations;

ii. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations;

iii. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act; or

iv. *valid existing rights* exist under §105.*Valid Existing Rights*.a and b.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998), LR 29:

**Subpart 2. Areas Unsuitable for Mining**

**Chapter 11. Areas Designated by Act of Congress**

**§1105. Areas Where Mining Is Prohibited or Limited**

A. No surface coal mining operation shall be conducted on the following lands unless the applicant has either valid existing rights, as determined under §2323, or qualifies for the exception for existing operations under §1109.

A.1. - A.4.a. ...

b. where the office allows the public road to be relocated or the area affected to be within 100 feet of such road, after public notice and opportunity for a public hearing in accordance with §1107.D, and after making a written finding that the interests of the affected public and landowners will be protected;

A.5. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

### **§1107. Procedures**

A. ...

B. The office shall reject any portion of the application that would locate surface coal mining operations on land protected under §1105 unless:

1. the site qualifies for the exception for existing operations under §1109;
2. a person has valid existing rights for the land, as determined under §2323;
3. the applicant obtains a waiver or exception from the prohibitions of §1105 in accordance with §1107.D or E; or
4. for lands protected by §1105.A.3, both the office and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with §1107.F.

C. If the office is unable to determine whether the proposed operation includes land within an area specified in §1105.A.1 or is located closer than the limits provided in §1105.A.6 or 7, the office shall transmit a copy of the relevant portions of the permit application to the federal, state or local government agency with jurisdiction over the protected land, structure or feature for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within 30 days of receipt of the request. The notice must specify that another 30 days is available upon request, and that the office will not necessarily consider a response received after the comment period provided. If no response is received within the 30-day period or within the extended period granted, the office may make the necessary determination based on the information it has available.

D. §1107.D does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that join a public road, as described in §1105.A.4.b. Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in §1105.A.4.b) or where the applicant proposes to relocate or close any public road, the office or public road authority designated by the office shall:

1. require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;
2. provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;
3. if a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and
4. make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from

the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the office or public road authority determines that the interests of the public and affected landowners will be protected.

E.1. Subsection 1107.E does not apply to lands for which a person has valid existing rights, as determined under §2323; lands within the scope of the exception for existing operations in §1109; or access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in §1105.A.5. Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

2. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver prior to August 3, 1977 from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

3.a. Where the applicant for a permit after August 3, 1977 had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

b. A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public-property records pursuant to state laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

F.1. Where the office determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the office shall transmit to the federal, state or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond. The notice must specify that another 30 days is available upon request, and that failure to interpose a timely objection will constitute approval. The office may not issue a permit for a proposed operation subject to the provisions of this Paragraph unless all affected agencies jointly approve.

2. Subsection 1107.F does not apply to lands for which a person has valid existing rights, as determined under §2323 or lands within the scope of the exception for existing operations in §1109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

### **§1109. Exception for Existing Operations**

A. The prohibitions and limitations of §1105 do not apply to surface coal mining operations for which a valid permit, issued under Subpart 3 of these regulations, exists when the land comes under the protection of §1105. This

exception applies only to lands within the permit area as it exists when the land comes under the protection of §1105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

**Subpart 3. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems**

**Chapter 21. Coal Exploration and Development**

**§2111. General Requirements: Development**

**Operations Involving Removal of More Than 250 Tons**

A. - A.7. ...

8. for any lands listed in §1105, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of §1105, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105.

B. - B.3 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

**§2113. Applications: Approval or Disapproval of Development of More Than 250 Tons**

A. - B.3 ...

4. will, with respect to exploration activities on any lands protected under §1105, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the office will provide reasonable opportunity to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105, to comment on whether the finding is appropriate.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

**Chapter 23. Surface Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information**

**§2311. Relationship to Areas Designated Unsuitable for Mining**

A. ...

B. If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required by §1107.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

**§2323. Valid Existing Rights Determination**

A. OSM is responsible for determining valid existing rights for federal lands listed at §1105. The office is responsible for determining valid existing rights for all non-Federal lands listed at §1105. The provisions of this Section apply when the office is responsible for determining valid existing rights.

B. A request for a valid existing rights determination must be submitted if surface coal mining operations will be conducted on the basis of valid existing rights under §1105. This request may be submitted before submitting an application for a permit or boundary revision.

1. Requirements for property rights demonstration. If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the applicant must provide a property rights demonstration under §105. *Valid Existing Rights*.a. This demonstration must include the following items:

a. a legal description of the land to which the request pertains;

b. complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which your request pertains;

c. a complete chain of title for the surface and mineral estates of the land to which the request pertains;

d. a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

e. a description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Louisiana property law;

f. complete documentation of the nature and ownership, as of the date that the land came under the protection §1105, of all property rights for the surface and mineral estates of the land to which the request pertains;

g. names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

h. if the coal interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of the applicant's property rights claims;

i. any comments that the applicant received in response to the notification provided under §2323.B.1.h.

2. Requirements for Good Faith/All Permits Standard. If the request relies upon the good faith/all permits standard in §105. *Valid Existing Rights*.b.i, the applicant must submit the information required under §2323.B.1. The applicant also must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

a. approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant or a predecessor in interest obtained before the land came under the protection of §1105;

b. application dates and identification numbers for any permits, licenses, and authorizations for which the applicant or a predecessor in interest submitted an application before the land came under the protection of §1105;

c. an explanation of any other good faith effort that the applicant or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of §1105.

3. Requirements for Needed for and Adjacent Standard. If the request relies upon the needed for and adjacent standard in §105. *Valid Existing Rights*.b.ii, the applicant must submit the information required under §2323.B.1. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of §1105.

4. Roads. If the request relies upon one of the standards for roads in §105. *Valid Existing Rights*.c.i-iii, documentation must show that:

a. the road existed when the land upon which it is located came under the protection of §1105 of these regulations or §922.D of the Act, and the applicant has a legal right to use the road for surface coal mining operations;

b. a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act, and, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

c. a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §1105 of these regulations or §922.D of the Act.

#### C. Initial Review of Request

1. The office shall conduct an initial review to determine whether the request includes all applicable components of the submission requirements of §2323.B. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of §2323.B, the office shall notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of §2323.B, the office shall implement the notice and comment requirements of §2323.D.

4. If the information requested under §2323.C.2 is not provided within the time specified or as subsequently extended, the office shall issue a determination that valid

existing rights have not been demonstrated, as provided in §2323.E.4.

#### D. Notice and Comment Requirements and Procedures

1. When the request satisfies the completeness requirements of §2323.C, the applicant must publish a public notice in accordance with §3103.A. This notice must invite comment on the merits of the request. The notice shall contain, at a minimum:

a. the location of the land to which the request pertains;

b. a description of the type of surface coal mining operations planned;

c. a reference to and brief description of the applicable standards under the definition of valid existing rights in §105;

i. if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in §105. *Valid Existing Rights*.b, the notice also must include a description of the property rights claimed and the basis for that claim;

ii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.i, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations;

iii. if the request relies upon the standard in §105. *Valid Existing Rights*.c.ii, the notice also must include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of §1105 of these regulations or §922.D of the Act. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations;

d. if the request relies upon one or more of the standards in §105. *Valid Existing Rights*.b, c.i, and c.ii, a statement that the office will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by §2323.D.3, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim;

e. a description of the procedures that the office will follow in processing the request;

f. the closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice;

g. a statement that interested persons may obtain a 30-day extension of the comment period upon request; and

h. the name and address of the office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

2. The office shall promptly provide a copy of the notice required under §2323.D.1 to:

- a. all reasonably locatable owners of surface and mineral estates in the land included in the request; and
- b. the owner of the feature causing the land to come under the protection of §1105, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of §1105.

3. The letter transmitting the notice required under §2323.D.2 must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the agency responsible for the determination of valid existing rights may grant additional time for good cause upon request. The agency need not necessarily consider comments received after the closing date of the comment period.

#### E. How a Decision Will Be Made

1. The office must review the materials submitted under §2323.B, comments received under §2323.D, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the office must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the office deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the office must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in §105. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

3. Impact of Property Rights Disagreements. This Paragraph applies only when the request relies upon one or more of the standards in §105. *Valid Existing Rights*. b, c.i, and c.ii.

a. The office must issue a determination that the applicant has not demonstrated valid existing rights if property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The office will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This Paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under §§2323.D.1 or D.3.

b. If the record indicates disagreement as to the accuracy of property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the office must evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under §105. *Valid Existing Rights*. a, c.i, or c.ii, as appropriate. The office must then proceed with the decision process under §2323.E.2.

4. The office must issue a determination that the applicant has not demonstrated valid existing rights if information that the office requests under §§2323.C.2 or E.1 is not submitted within the time specified or as subsequently extended. The office will make this determination without

prejudice, meaning that the applicant may refile a revised request at any time.

5. After making a determination, the office must:

a. provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of §1105, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of §1105; and

b. publish notice of the determination in a newspaper of general circulation in the parish in which the land is located.

F. Administrative and Judicial Review. A determination that the applicant has or does not have valid existing rights is subject to administrative and judicial review under §§3301 and 3303.

G. Availability of Records. The office must make a copy of that request available to the public in the same manner as the office must make permit applications available to the public under §2119. In addition, the office must make records associated with that request, and any subsequent determination under §2323.E, available to the public in accordance with the requirements and procedures of §6311.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

### **Chapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operation Plan**

#### **§2731. Protection of Public Parks and Historic Places**

A. - A.1. ...

2. if valid existing rights exist or joint agency approval is to be obtained under §1107.F, to minimize adverse impacts.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

#### **§2733. Relocation or Use of Public Roads**

A. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under §1107.D, the applicant seeks to have the office approve conduction of the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way, or seeks approval for relocating a public road.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

### **Chapter 31. Public Participation, Approval of Permit Applications and Permit Terms and Conditions**

#### **§3103. Public Notices of Filing of Permit Applications**

A. - A.4. ...

5. if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with §1107.D, a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

A.6. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

### §3115. Criteria for Permit Approval or Denial

A.-A.4.b. ...

c. not on any lands subject to the prohibitions or limitations of §1105; or

A.4.d. - A.16. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

## Chapter 37. Small Operator Assistance

### §3705. Eligibility for Assistance

A. - A.1. ...

2. establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

a. the pro rata share, based upon percentage of ownership of the applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

b. the pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

A.2.c. - A.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 6:177 (May 1980), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:

## Subpart 5. Permanent Program Performance Standards

### Chapter 53. Permanent Program Performance

#### Standards: Surface Mining Activities

### §5423. Revegetation: Standards for Success

A. - B.1.d.iv. ...

e. The criteria and procedures for determining ground cover and production success are found at §5424.

B.2. - B.8. ...

a. The criteria and procedures for determining ground cover and stocking success are found at §5425.

B.9. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 21:1082 (October 1995), LR 29:

### §5424. Revegetation: Standards for Success C Post-Mining Land Use of Pastureland

#### A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and production success for areas being restored to pastureland.

2. Pursuant to §5423, ground cover and production success on pastureland must be determined on the basis of the following conditions:

a. general revegetation requirements of the approved permit;

b. ground cover density; and

c. production.

3. The permittee is responsible for determining and measuring ground cover and production and submitting this data to the commissioner for evaluation. Procedures for making these determinations are described below.

#### B. Success Standards and Measurement Frequency

##### 1. Ground Cover

a. Ground cover shall be considered acceptable if it is at least 90 percent of the approved success standard at a 90 percent statistical confidence level for any two of the last four years of the five-year responsibility period. The success standard for ground cover shall be 90 percent.

i. Ground cover must be measured over each noncontiguous area that is proposed for release. The aggregate of areas with less than 90 percent ground cover must not exceed 5 percent of the release area. These areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of 90 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of 90 percent. Refer to sampling technique for ground cover in §5424.C.2.a.

b. Ground cover shall consist of the species mixture approved in the original permit or an approved acceptable species mixture as recommended by the USDA/Natural Resources Conservation Service (NRCS) for use in that area. No more than 15 percent of the stand can be approved species not listed in the permit.

c. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a .10 alpha error). Whenever ground cover is equal to or exceeds the success standard, the statistical confidence interval test does not have to be determined.

d. Ground cover success and forage production success need not be met during the same year.

e. Ground cover shall be sampled once per year during any two of the last four years of the five-year responsibility period to verify cover data.

##### 2. Forage Production

a. The success standard for production of hay on pastureland shall be 90 percent of an approved reference area, if a reference area is established, or 90 percent of the estimated yield found in the Soil Conservation Service (now Natural Resources Conservation Service (NRCS)) parish soil

survey. The estimated yields are those expected under a high level of management and were determined by the NRCS based on records of farmers, conservationists and extension agents.

b. Production shall be sampled for at least two separate years. Any two of the last four years of the five-year responsibility period may be selected.

3. Reference Area Requirements

a. Reference areas must be representative of soils, slope, aspect, and vegetation in the premined permit area. However, in cases where differences exist because of mixing of several soil series on the reclaimed area or unavailability of a reference area as herein described, yields must be adjusted.

b. Reference area pastureland must be under the same management as pastureland in the reclaimed area. This means that it must:

- i. consist of similar plant species and diversity as approved in the permit;
- ii. be currently managed under the same land use designation as the proposed mined release area;
- iii. consist of soils in the same land capability class;
- iv. be located in the general vicinity of the mined test area to minimize the impact of differing weather;
- v. use the same fertilizer and pest management techniques;
- vi. use fertilizer rates based on the same yield goal;
- vii. be mowed at the same time to the same height as the reclaimed area;
- viii. use identical harvest dates and plant populations; and
- ix. use any other commonly used management techniques not listed above such as adequate weed and insect control, provided the pastureland area and the reference plot are treated identically.

c. Reference areas shall consist of a single plot (whole plot) at least four acres in size. Either statistically adequate subsampling or whole plot harvesting may be used to determine yields.

d. Reference plot forage yields must be at a level that is reasonably comparable to the parish average for the given crop. Reference plot yields that are less than 80 percent of the parish average are highly suspect and may be rejected.

e. Reference areas may be located on undisturbed acreage within permitted areas. If not so located, the permittee must obtain from the landowner(s) a written agreement allowing use of the property as a reference area and allowing right of entry for regulatory personnel.

f. When release areas and reference plots fall on different soil series, adjustments must be made to compensate for the productivity difference.

C. Sampling Procedures

1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites;
- ii. a sampling technique unaffected by the sampler's preference; and

iii. sufficient samples to represent the true mean of the vegetation characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover type being measured. Additionally, at least one ground cover sample point must be measured in each noncontiguous unit, if the release area does not consist of a single unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows:

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable	Not approved in permit

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Productivity

i. When evaluating productivity, two components that may potentially influence the end results of production yields are time of harvest and moisture content.

(a). Time of Harvest. Herbaceous species must be harvested at times and frequencies appropriate to the plant species (i.e., cool-season species should be sampled in the winter or spring; warm-season species should be sampled in the summer or fall). Sampling should be timed to



coincide with seed ripeness or the mature stage of the target vegetative species. Plant communities that are comprised of both cool- and warm-season species should be sampled when the overall plant community production is at a peak. If an area has not had herbaceous biomass removed (i.e., mowing, baling, grazing) since the last sampling, then sampling must not be conducted until the vegetation is removed and regrowth has taken place.

(b). Moisture Content. The moisture content of harvested herbaceous biomass and other vegetative components must be standardized, in order to eliminate weight variations due to moisture content. The weight of harvested vegetation is to be standardized by oven-drying at 60° C for 24 hours or until the weight stabilizes.

ii. Productivity can be evaluated by hand-harvesting or with mechanized agricultural implements. Productivity measurements must be obtained during the growing season of the primary vegetation species. Productivity is estimated from only the current season's growth. There are two methods that can be used to evaluate production: using sampling frames for harvesting plots or whole-field harvests.

(a). Sampling Frames. A sampling frame shall be an enclosure, of known dimension appropriate for sampling pasture lands, capable of enclosing the sample location. A sample location shall be established at each of the randomly chosen sites, such that the center of the sampling frame is the random point. The permittee shall clip the biomass 2 inches above ground level within the frame. The biomass to be clipped shall be from all plant species growth whose base lies within the sampling frame. This biomass shall then be weighed and recorded. As each frame is clipped and weighed, the biomass shall be put into a bag for oven drying. Samples shall be oven-dried to a constant weight and reweighed to determine dried weight. All data collected from the clippings within the sampling frame shall be recorded and analyzed.

(b). Whole Area Harvesting. If whole release area harvesting is chosen as the method for data collection, the entire area shall be harvested and the data recorded and analyzed.

iii. If truckloads of bales are weighed for hay production when a whole area is harvested, at least three truckloads from each 100 acres are weighed. Each truckload should have at least three large round bales or 20 square bales. A sample will consist of the average bale weight per truckload. A statistically adequate sample size must be obtained. Multiply the number of hay bales per area by the average bale weight to obtain total production for that area. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

iv. If performing statistical comparisons for hay production when a whole field is harvested, the weights of either 10 percent or 15 bales, whichever is greater, are converted to pounds per acre (lbs/ac) by taking their average weight and multiplying that figure by the total number of bales, divided by the number of acres harvested. Total production is then compared to 90 percent of the reference or target yield, using a 90 percent or greater statistical confidence level.

v. To determine which bales to weigh, randomly select a number from one to ten then count and weigh every tenth bale thereafter until the minimum number or 10 percent of the bales have been weighed. The first and last bale of any noncontiguous field or site should not be weighed. The bales shall be counted, but if the random number falls on either of the two bales mentioned, either advance one bale or select the bale immediately previous to the last bale produced.

### 3. Sample Adequacy

#### a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples is equal to or less than the initial minimum number, the initial sampling will satisfy the sampling requirements. If the number of samples needed is greater than the initial minimum number, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

#### b. Productivity Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s<sup>2</sup>) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

### D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or production for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or production value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and average forage production was insufficient, but close to the standards, the permittee may submit the data to the commissioner to determine if the production was acceptable when statistically compared to the standards using a t-test at a 90-percent statistical confidence interval.

3. Raw yield data from reclaimed areas and raw data from reference areas must first be oven dried to remove moisture, then adjusted by the parish soil survey average yields before statistical comparisons can be made.

#### E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of and reference plots;
- b. the location of each sample point;
- c. the area covered by the sampling; and
- d. all permit boundaries.

#### F. Mitigation Plan

1. Ground cover and forage productivity must equal or exceed the standards for reclamation phase III liability release for at least two sampling years during the second through the fifth years following completion of the last augmented seeding. If productivity is not achieved by these dates, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal farming practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new phase III release proposal.

2. If renovation, soil substitution or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

### **§5425. Revegetation: Standards for SuccessC Post-Mining Land Use of Wildlife Habitat**

#### A. Introduction

1. This Section describes the criteria and procedures for determining ground cover and stocking success for areas developed for wildlife habitat.

2. Pursuant to §5423, ground cover and stocking success on wildlife habitat must be determined on the basis of the following conditions:

a. general revegetation requirements of the approved permit;

b. ground cover; and

c. tree or shrub stocking and survival.

3. The permittee is responsible for measuring and determining ground cover and stocking and submitting this data to the commissioner for evaluation. Procedures for making these determinations are described below.

#### B. Success Standards and Measurement Frequency

##### 1. Ground Cover

a. Ground cover shall be considered acceptable if it has at least 70 percent density with a 90 percent statistical confidence for the last year of the five year responsibility period.

b. The aggregate of areas with less than 70 percent ground cover must not exceed five percent of the release area. These individual areas must not be larger than 1 acre and must be completely surrounded by desirable vegetation that has a ground cover of not less than 70 percent. Areas void of desirable vegetation may not be larger than 1/4 acre and must be surrounded by desirable vegetation that has a ground cover of not less than 70 percent.

c. No more than 35 percent of the stand can consist of approved species not listed in the permit.

##### 2. Tree and Shrub Stocking Rate

a. The stocking rate for trees and shrubs shall be determined on a permit-specific basis after consultation and approval by the Louisiana Department of Wildlife and Fisheries. Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved post-mining land use. When this requirement is met and acceptable ground cover is achieved, the five-year responsibility period shall begin.

b. Tree and shrub stocking rate shall be sampled once during the last year of the five-year responsibility period. The woody plants established on the revegetated site must be equal to or greater than 90 percent of the stocking rate approved in the permit with 90 percent statistical confidence. Trees and shrubs counted shall be healthy and in place for not less than two growing seasons. At the time of final bond release at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable minimum period of responsibility. The permittee must provide documentation of this in the form of paid receipts, reclamation status reports, and normal correspondence.

#### C. Sampling Procedures

##### 1. Random Sampling

a. To assure that the samples truly represent the vegetative characteristics of the whole release or reference area, the permittee must use methods that will provide:

- i. a random selection of sampling sites,
- ii. a sampling technique unaffected by the sampler's preference, and
- iii. sufficient samples to represent the true mean of the vegetative characteristics.

b. Sampling points shall be randomly located by using a grid overlay on a map of the release or reference area and by choosing horizontal and vertical coordinates. Each sample point must fall within the release or reference area boundaries and be within an area having the vegetative cover

type being measured. Additionally, if the release area does not consist of a single unit, at least one sample point must be measured in each noncontiguous unit.

c. The permittee shall notify the office 10 days prior to conducting sampling or other harvesting operations to allow regulatory personnel an opportunity to monitor the sampling procedures.

2. Sampling Techniques

a. Ground Cover. There are several approved methods for measuring ground cover. As stated at §5423.A.1, these are: pin method, point frame method and line intercept method. The first contact, or "hit", of vegetation shall be classified by species as acceptable or unacceptable as follows.

Acceptable	Unacceptable
Vegetation approved in permit	Vegetation not approved in permit
Dead vegetation or litter from acceptable species	Rock or bare ground
Acceptable	Not approved in permit

i. Pin Method. In the pin method, a pinpoint is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed pin is considered one sample unit. An acceptable type of pin method would include recording each pin contact at one-foot intervals along a 100-foot tape. Each randomly placed 100-foot tape would be considered one sample unit.

ii. Point Frame Method. In the point frame method, a group of pinpoints is lowered to the ground. If vegetation is encountered, a hit is recorded. If bare ground is encountered, a miss is recorded. Sample locations are distributed randomly throughout the area to be measured. Percentage of cover is the number of hits divided by the total number of points sampled. Each randomly placed frame is considered one sample unit.

iii. Line Intercept Method. The sampling unit is a tape at least 100 feet long that is stretched from a random starting point in a randomly selected direction. The procedure consists of recording the length of tape underlain by vegetation, then dividing by the total length of tape to obtain the percentage of cover. Each randomly located tape is considered one sampling unit.

b. Sampling Circles (Trees/Shrubs)

i. A sampling circle shall be a round area of known radius. The permittee shall establish a sampling circle at each randomly selected sampling point such that the center of the sampling circle is the random point. Permittee may draw the circle by attaching a string to a stake fixed at the random point and then sweeping the end of the string (tightly stretched) in a circle around the stake. The permittee shall count all living trees and shrubs within each of the sampling circles. In more mature tree/shrub areas, the stakes may need to be extended to elevate the string above the growth.

ii. To count as a living tree or shrub, the tree or shrub must be healthy and must have been in place for at least two years. At the time of liability release, 80 percent must have been in place for three years.

3. Sample Adequacy

a. Ground Cover Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average cover (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

b. Sampling Circles (Trees/Shrubs) Data

i. Data shall be collected using a multi-staged sampling procedure. During the first stage, an initial minimum number of samples is taken. Using this initial group and applying the formula below, determine the actual number of samples needed:

$$n = (t^2 s^2) / (0.1x)^2$$

(the variance (s<sup>2</sup>) must be based on oven dry weight)

Where:

n = minimum number of samples needed;

t<sup>2</sup> = squared t-value from the T-Table;

s<sup>2</sup> = initial estimate of the variance of the release (or reference) area; and

(0.1x)<sup>2</sup> = the level of accuracy expressed as 10 percent of the average weight (note that this term is squared).

ii. If the formula reveals that the required number of samples have been taken, the initial sampling will satisfy the sampling requirements. If a greater number of samples is needed, additional samples must be taken (Stage Two Sampling), as specified by the formula, and n recalculated. This process shall be repeated until sample adequacy is met.

D. Data Submission and Analysis

1. If the data shows that revegetation success has been met, the permittee shall submit the data to the commissioner for review. Ground cover or stocking for the release area will be considered successful when it has been measured with an acceptable method, has achieved sample adequacy, and where the average ground cover or stocking value is equal to or greater than the success standard.

2. When the data indicates that the average ground cover and/or tree and shrub average stocking density is insufficient, but close to the standards, the permittee may submit the data to the Commissioner to determine if the revegetation is acceptable when statistically compared to the

standards using a t-test at a 90-percent statistical confidence interval.

#### E. Maps

1. When a proposed reclamation phase III release is submitted to the office, it must be accompanied by maps showing:

- a. the location of the area covered by the proposed release;
- b. the location of reference plots; and
- c. all permit boundaries.

2. When data from a previously approved plan is submitted to the office, it must be accompanied by maps showing:

- a. the location of each transect and sampling circle location,
- b. the area covered by the sampling, and
- c. all permit boundaries.

#### F. Mitigation Plan

1. Ground cover must be greater than or equal to 70 percent coverage and tree and shrub stocking must achieve the revegetation standards by the fifth year of the five-year responsibility period. If these standards are not achieved by this date, the permittee must submit a mitigation plan to the commissioner that includes the following:

- a. a statement outlining the problem;
- b. a discussion of what practices, beyond normal agronomic practices, the operator intends to use to enable the area to finally meet the release standards; and
- c. a new Phase III release proposal.

2. If renovation, soil substitution, or any other practice that constitutes augmentation is employed, the five-year responsibility period shall restart after the mitigation plan is approved and the practices are completed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:901-932.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 29:

#### **Family Impact Statement**

In accordance with Act 1183 of 1999, the Department of Natural Resources, Office of Conservation, hereby issues this Family Impact Statement: The proposed amendments will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

A public hearing will be held at 10 a.m., April 28, 2003, in the LaBelle Hearing Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, at which time all interested persons will be afforded an opportunity to submit oral and written comments regarding the proposed amendment to LAC 43:XV, (Statewide Order 29-O-1) the Louisiana Surface Mining Regulations.

All interested persons are invited to submit written comments on the proposed amendment. Such comments must be submitted no later than 5 p.m., May 2, 2003, to Mr. Carroll Wascom, Injection and Mining Division, Office of Conservation, Box 94275, Baton Rouge, LA 70804-9275.

Copies of the proposed amendment may be obtained or viewed at the Office of the State Register, 1201 North Third Street, Baton Rouge, LA 70802, phone (225) 342-5015 or through the Department of Natural Resources, Office of

Conservation, 617 North Third Street, Baton Rouge, LA 70802, phone (225) 342-5586.

James H. Welsh  
Commissioner of Conservation

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Louisiana Surface Mining Regulations**

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

There will be no implementation costs or savings to state or local governmental units since Louisiana presently has surface mining Rules in effect and the proposed change will keep Louisiana's Surface Mining Program in compliance with federal regulations.

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

Louisiana presently receives approximately \$190,000 in federal funds and \$280,000 in state matching funds to administer the Surface Mining Program. Failure to amend the Louisiana Rules to make them consistent with federal regulations would cause the state to lose this federal funding.

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

There will be negligible costs to directly affected persons or surface coal mine operators. Benefits will be realized by persons near the surface mining operations and the state's citizens generally due to the reclamation of the surface mining property according to state and federal standards.

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

The proposed Rule amendment will bring the Louisiana Surface Mining Program into compliance with federal Surface Mining Control and Reclamation Act (SMCRA) regulations, will ensure the continued operation of surface mining in Louisiana and will have no significant effect on competition or employment.

Felix J. Boudreaux  
Assistant Commissioner  
0303#037

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Natural Resources Office of Conservation**

Underwater Obstructions (LAC 43:XI.311)

The Louisiana Office of Conservation hereby proposes to define site clearance application fees in LAC 43:XI.311 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana, particularly Title 30 of the Louisiana Revised Statutes of 1950. The proposed Rule amendment will bring site clearance permit application fees into conformance with the Office of Conservation's current fee schedule.

**Title 43**  
**NATURAL RESOURCES**

**Part XI. Office of Conservation-Pipeline Division**  
**Subpart 2. Underwater Obstructions**

**Chapter 3. Underwater Obstructions**

**§311. Abandoned Facilities**

A. - E.1. ...

2. A procedural plan for site clearance verification of platform, well or structure abandonment (§311.E.1.b or §311.E.1.c) shall be developed by the lessee and submitted to the commissioner of conservation for approval with the permit application for platform or structure removal. Vessels used for site clearance verification operations in territorial seas shall be equipped with a navigational positioning system capable of providing position accuracy of ±30-feet. The navigational positioning system proposed for use must be identified in the procedural plan. Vessels used for site clearance verification operations in coastal waters and shallow (5 feet or less below mean sea level) territorial seas are not required to be equipped with a navigational system provided that alternate methods for insuring proper positioning during site clearance verification operations are described in the plan submitted for approval. Each plan and application shall be accompanied by a filing fee. The fee shall be the same as the public hearing fee set forth in LAC 43:XIX, Chapter 7.

E.2.a. - 3.f. ...

AUTHORITY NOTE: Promulgated in accordance with RS 30:4.D-H.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:702 (July 1985), amended LR 18:1412 (October 1992), LR 29:

**Family Impact Statement**

1. The effect of these rules on the stability of the family. These Rules will have no effect on the stability of the family.

2. The effect of these rules on 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. The effect of these rules on the functioning of the family. These Rules will have no effect on the functioning of the family.

4. The effect of these rules on family earnings and family budget. These Rules will have no effect on family earnings and family budget.

5. The effect of these rules on family earnings and family budget. These Rules will have no effect on the functioning of the family.

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. These Rules will have not effect on the ability of the family or local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments to Mariano G. Hinojosa, Louisiana Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. Written comments will be accepted through April 25, 2003.

All interested parties will be afforded the opportunity to submit comments regarding these new and amended regulations at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 5 p.m., Friday, April 25, 2003, at the following address: Office of

Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA, 70804, Re: Docket No. PL 03- 009.

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 30:557.G, notice is hereby given that the Commissioner of Conservation will conduct a public hearing at 9 a.m., Monday, April 28, 2003, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA. A copy of the proposed regulations may be obtained by contacting Mariano Hinojosa at 225-342-5519 or by writing the Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804.

All persons having interest in the aforesaid shall take notice thereof.

James H. Welsh  
Commissioner of Conservation

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Underwater Obstructions**

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

There should be no additional costs or savings to local governmental units. This action amends the site clearance regulations regarding permit application fees.

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

Under the proposed amendment, site clearance application fees will increase from \$600 to \$755. About 100 site clearance applications are reviewed annually. The fee increase will result in additional revenue of approximately \$15,000.

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

The proposed amendment will increase the filing fee for site clearance permits from \$600 to \$755.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

James H. Welsh  
Commissioner  
0303#027

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

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

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:792 and 26:150, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.317 to clarify the restrictions relative to the relationship between suppliers and retailers relative to internet website advertising.

The proposed amendment provides that no supplier of alcohol beverages shall directly or indirectly furnish or pay for any advertising with respect to any one or more retail licensees by means of radio or similar media; but for purposes of §317.C.2.j, internet websites including related

emails or direct mail shall not be construed as "similar media."

**Title 55  
PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 1. Beer and Liquor**

**Chapter 3. Alcoholic Beverages**

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

A. - C.2.j.iii. ...

k. No supplier of alcohol beverages shall directly or indirectly furnish or pay for any advertising with respect to any one or more retail licensees by means of radio or similar media. For purposes of C.2.j above, internet websites including related emails or direct mail shall not be construed as "similar media."

D. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 26:75.C, R.S. 26:150, R.S. 26:275.B, R.S. 26:287, R.S. 26:792 and R.S. 26:793.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety, Office of Alcoholic Beverage Control, LR 4:464 (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 28:1484 (June 2002), LR 29:

**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.

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 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 written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Prohibition of Certain Unfair Business Practices**

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There should be no effect on revenue collections of state or local governmental units as a result of the proposed Rule

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

Proposed LAC 55:VII.317.C.2.k is to clarify restrictions relative to relationship between suppliers and retailers relative to internet website advertising.

Content of Rule will clarify Louisiana law relative to prohibition of advertising furnished by suppliers of alcohol beverages for retailers of such beverages with respect to any means of radio or similar media; and to further clarify that such prohibition shall not be by way of phrase "similar media" be extended to include websites.

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

This proposed Rule should have no effect on competition or employment.

Murphy J. Painter  
Commissioner  
0303#097

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Responsible Vendor Program Servers  
(LAC 55:VII.507)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:933, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.507 to require that those who seek certification and enrollment as a responsible vendor must be in compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be grounds for denying an application for, or an application for the renewal of, any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

**Title 55  
PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control  
Subpart 1. Beer and Liquor**

**Chapter 5. Responsible Vendor Program**

**§507. Servers**

A. - B.3. ...

4. The server shall meet compliance with R.S. 37:2951.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 29:

**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.

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 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 written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter  
Commissioner

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

**RULE TITLE: Responsible Vendor Program C Servers**

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those who apply to become approved servers of alcohol beverages are induced to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission in order to obtain such server permits.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

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

This proposed Rule could have an effect on employment relative to the possible denial of applicants for server permits.

Murphy J. Painter  
Commissioner  
0303#095

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Responsible Vendor Program C Training  
(LAC 55:VII.509)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:933, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.509 to require that those who seek certification and providers and trainers under the Responsible Vendor Program must be in compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be grounds for denying an application for, or an application for the renewal of, any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

**Title 55  
PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 1. Beer and Liquor**

**Chapter 5. Responsible Vendor Program**

**§509. Training; Providers and Trainers**

A. - D.4. ...

5. A person or business entity that applies to become an approved provider or trainer for alcohol server education shall meet compliance with R.S. 37:2951 and the owners of any such a business entity meet compliance with R.S. 37:2951.

E. - K.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1950 (October 1998), amended LR 29:

**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.

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 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 written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Responsible Vendor ProgramC Training**

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those who apply to become approved providers for alcohol server education are induced to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission in order to obtain such certification.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

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

This proposed Rule could have an effect on competition or employment relative to the possible denial of those who apply to become approved providers for alcohol server education as a result of their failure to comply with R.S. 37:2951.

Murphy J. Painter  
Commissioner  
0303#094

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Responsible Vendor ProgramC Vendors  
(LAC 55:VII.505)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:933, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.505 to require that those who seek certification and enrollment as a responsible vendor must be in compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be grounds for denying an application for, or an application for the renewal of any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 1. Beer and Liquor**

**Chapter 5. Responsible Vendor Program**

**§505. Vendors**

A. - A.4.b. ...

5. The vendor shall meet compliance with R.S. 37:2951.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:931 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1949 (October 1998), amended LR 25:879 (May 1999), LR 29:

**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.

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 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 written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter  
Commissioner

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

**RULE TITLE: Responsible Vendor ProgramC Vendors**

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those applying for Responsible Vendor Certification are in a position to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission and are thereby induced to do so.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

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

This proposed Rule could have an effect on competition or employment relative to the possible denial of those who seek certification and enrollment as a responsible vendor as a result of their failure to comply with R.S. 37:2951.

Murphy J. Painter  
Commissioner  
0303#096

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Tobacco Permits (LAC 55:VII.3105)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the authority of R.S. 26:922, the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to amend LAC 55:VII.3105 to require that any applicant for a tobacco license shall meet compliance with R.S. 37:2951. R.S. 37:2951.A provides that "...default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission, hereinafter referred to as the special commission, shall be

grounds for denying an application for, or an application for the renewal of, any license, permit, or certificate required by the state of Louisiana, or for the granting of a conditional license, permit, or certificate required by the state of Louisiana, or any of its departments, offices, agencies, and boards in order to practice or engage in a trade, occupation, or profession..." Attorney General Opinion No. 02-0135 provides that the requirements of R.S. 37:2951 are applicable to applicants for the licenses and permits issued by the Office of Alcohol and Tobacco Control.

**Title 55**

**PUBLIC SAFETY**

**Part VII. Alcohol and Tobacco Control**

**Subpart 2. Tobacco**

**Chapter 31. Tobacco Permits**

**§3105. Additional Information for Licenses;**

**Partnership, Corporation, Limited Liability Company (LLC)**

A. - B. ...

C. Any applicant for a tobacco license shall meet compliance with R.S. 37:2951.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:922 et seq.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:1320 (July 1998), amended LR 29:

**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.

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 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 written data, views, arguments or comments regarding these proposed amendments to Tammy Weaver, Office of Alcohol and Tobacco Control, Department of Revenue, to 8549 United Plaza Blvd., Suite 220, Baton Rouge, LA 70809.

Murphy J. Painter  
Commissioner

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

**RULE TITLE: Tobacco Permits**

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

There should be no implementation costs or savings to state or local governmental units associated with the proposed Rule.

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

There could be a possible effect on revenue collections of state or local governmental units as a result of the proposed Rule if those applying for a tobacco license are induced to pay their loans guaranteed by the Louisiana Student Financial Assistance Commission in order to receive such license.

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

This proposed Rule should have no effect on estimated costs and/or economic benefits to directly affected person and non-governmental groups.

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

This proposed Rule could have an effect on competition or employment relative to the possible denial of applicants for a tobacco license as a result their failure to comply with R.S. 37:2951.

Murphy J. Painter  
Commissioner  
0303#093

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Office of the Secretary**

**Penalty Waiver  
(LAC 61:III.2101)**

Under the authority of R.S. 47:1603 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary, proposes to amend LAC 61:III.2101 pertaining to a penalty waiver for delinquent filing or delinquent payment.

The purpose of this Rule is to inform the public of the documentation required when submitting requests for waiver of delinquent filing or late payment penalty and of factors that will be considered by the Department of Revenue in evaluating waiver requests. Title 47 Section 1603 provides that if the failure to file on time or the failure to timely remit the full amount due is not due to the negligence of the taxpayer, but is due to other causes set forth in written form and considered reasonable, the secretary may waive the penalty in whole or in part. When the penalty exceeds \$5,000, the waiver must be approved by the Board of Tax Appeals.

**Title 61**

**REVENUE AND TAXATION**

**Part III. Department of Revenue; Administrative Provisions and Miscellaneous**

**Chapter 21. Interest and Penalties**

**§2101. Penalty Waiver**

A. The secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely

remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed one hundred dollars, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting documentation. The affidavit must be signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. In lieu of an affidavit, the taxpayer may submit a Request for Waiver of Penalties for Delinquency Form signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the Request for Waiver of Penalties for Delinquency Form may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. The Request for Waiver of Penalties for Delinquency Form must be accompanied by any supporting documentation.

B. Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver, fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C. In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered separately in making this determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1603.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 27:866 (June 2001), LR 29:

**Family Impact Statement**

The proposed amendment of LAC 61:III.2101, 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:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable 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 Linda Denney, Miscellaneous Taxes & Regulatory Services, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802-5428 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m. April 23, 2003. A public hearing will be held on April 24, 2003, at 9:30 a.m. at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Penalty Waiver**

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

Implementation of this proposed regulation, which establishes the documentation required to be submitted to the Department of Revenue for delinquent filing or late payment penalty waiver requests, will have no impact on the agency's costs.

**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)**

Taxpayers whose penalties exceed \$100 may incur a cost for having a document notarized. This amount is undeterminable.

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

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
0303#040

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Social Services  
Office of the Secretary**

Class "A" Child Day Care (LAC 48:I.Chapter 53)

The Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to amend the Louisiana Administrative Code, Title 48, Part I, Subpart 3, Licensing and Certification. This Rule is mandated by R.S. 46:1401 et seq. These standards are being revised to supersede any previous regulations heretofore published.

**Title 48**

**PUBLIC HEALTH – GENERAL**

**Part 1. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 53. Day Care Centers**

**§5301. Purpose**

A. It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to ensure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to ensure protection of all individuals under care in child care facilities and placement agencies and to encourage and assist in the improvement of programs.

B. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate. This Chapter shall not give the Department of Social Services jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any curriculum or instruction of a school or facility sponsored by a church or religious organization so long as the civil and human rights of the clients and residents are not violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

**§5302. Authority**

**A. Legislative Provisions**

1. The State of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child care centers. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq. (Act 367 of 1956 and amended by Act 152 of 1962, Act 241 of 1968, Act 290 of 1976, Act 678 of 1977, Act 409 of 1978, Act 286 of 1985, Act 1463 of 1997 and Act 1237 of 1999) making mandatory the licensing of all child care facilities and child placing agencies, including child care centers.

2. In accordance with Act 1237 of the 1999 Legislative Session, a child care center is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the primary purpose of providing care, supervision, and guidance of 7 or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least 12 1/2 hours in a continuous 7-day week. Related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver. A recognized religious organization which is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code and does not operate more than 24 hours in a continuous 7-day week is not considered a child care center.

**B. Penalties**

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency shall be licensed.

2. The law provides a penalty for operation of a center without a valid license. The penalty for operation without a valid license is a fine of not less than \$75 nor more than \$250 for each day of operation without a license.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services, through its duly authorized agents, to inspect at regular intervals not to exceed one year or as deemed necessary by the department and without previous notice all child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401 et seq.)

2. Whenever the department is advised or has reason to believe that any person, agency or organization is operating a non-exempt child care facility without a license, the department shall make an investigation to ascertain the facts.

3. Whenever the department is advised or has reason to believe that any person, agency or organization is operating in violation of the Child Care Center Class A Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment of children coming to the attention of the Department of Social Services will be investigated.

D. The Louisiana Advisory Committee

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class "A" facilities ("New" meaning the first regulations written after Act 286 of 1985);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, Rules, and regulations for Class "A" facilities at least every three years; and

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class "A" license.

2. The committee is composed of 19 voting members, appointed by the governor, including provider and consumer representation from all types of child care services, the educational and professional community and the director of the Bureau of Licensing who serves as an ex-officio member.

E. Waivers

A. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or children are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by

the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), IR 24:2345 (December 1998), LR 29:

§5303. Procedures

A. Application

1. Anyone applying for a license after the effective date of these standards shall meet all of the requirements herein.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. To do so, the following steps should be followed:

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area where the facility is to be located. Standards from Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; and City Fire Department (if applicable) should be obtained.

b. After securing building, obtain an application form issued by:

Department of Social Services  
Bureau of Licensing  
P. O. Box 3078  
Baton Rouge, LA 70821-3078  
Phone: (225) 922-0015  
Fax: (225) 922-0014

Web address: [www.dss.state.la.us/offos/html/licensing.html](http://www.dss.state.la.us/offos/html/licensing.html)

c. The completed application shall indicate Class "A" license. Anyone applying for State or Federal funding shall apply for Class "A" license. Licensure fees are required to be paid by all providers. A Class "A" license may not be changed to a Class "B" license if revocation procedures are pending.

d. After the center's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a center:

- i. Office of Public Health, Sanitarian Services;
- ii. Office of the State Fire Marshal, Code Enforcement and Building Safety;
- iii. Office of City Fire Department (if applicable);
- iv. Zoning Department (if applicable); and
- v. City or Parish Building Permit Office.

e. After the application has been received by the Bureau of Licensing, the bureau will request the Office of State Fire Marshal, Office of City Fire Department (if applicable), Office of Public Health and any known required local agencies to make an inspection of the location, as per their standards. However, it is the applicant's responsibility to obtain these inspections and approvals.

f. A licensing specialist will visit the center to conduct a licensing survey.

g. A license will be issued on an initial application when the following items have been met and written verification is received by the Bureau of Licensing:

- i. state fire approval;
- ii. city fire approval (if applicable);
- iii. health approval;
- iv. zoning approval (if applicable);
- v. full licensure fee paid;
- vi. director meets qualifications;

- vii. director designee meets qualifications (if applicable);
- viii. three current, positive, signed references on director;
- ix. three current, positive, signed references on director designee (if applicable); and
- x. licensure survey verifying compliance with all minimum standards.

3. When a center changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in Section 5303.A.2.g shall be submitted, except references and director/director designee qualifications if the director/director designee remains the same.

4. When a center changes ownership, the following information must be submitted prior to the sale or day of the sale in order for a license to be issued:

- a. a new application;
- b. full licensure fee;
- c. current health and state fire approval;
- d. city fire approval (if applicable);
- e. documentation of director qualifications as listed in Section 5310.A and B;
- f. letter from previous owner noting sale of child care business;
- g. documentation of director designee qualifications as listed in Section 5310.A and B (if applicable);
- h. three current, positive signed references on the director;
- i. three current, positive, signed references on director designee (if applicable); and
- j. copy of bill of sale.

NOTE: If the above information is not received prior to the sale or day of the sale, the new owner must not operate until a license is issued. When the application is received, it will be treated as an initial application rather than a change of ownership.

5. When a center changes class type, the following information shall be submitted to the bureau prior to the issuance of the new license:

- a. written request from the provider;
- b. full licensure fee;
- c. documentation of commercial liability insurance in accordance with Section 5305.B and Section 5331.J; and
- d. documentation of director/director designee qualifications as listed in Section 5310.A and B.

6. A license shall be valid only for the address on the application to a particular owner and is not transferable to another person or location or subject to sale. Two licenses shall not be issued simultaneously for the same physical address.

7. When a business is sold, discontinued, the operation has moved to a new location, or the license has been revoked, the current license immediately becomes null and void.

8. All new construction or renovation of a center requires approval from the agencies listed in Section 5303.A.2.d and the Bureau of Licensing prior to occupying the new space.

9. The bureau is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked due

to provider's failure to maintain compliance with minimum standards.

#### B. Fees

1. All fees shall be paid by certified check or money order only and are non-refundable.

2. An application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee which is due prior to licensure of the provider. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all change of ownership applications. The full licensure fee shall be paid for all class changes.

3. Annual licensure fees are required prior to renewal of the license. License fee schedules (based on capacity) are listed below:

15 or fewer:	\$ 25
16 - 50:	\$100
51 - 100:	\$175
101 or more:	\$250

#### 4. Other licensure fees:

a. A replacement fee of \$25 for any provider replacing a license when changes to the license are requested, e.g., change in capacity, name change, age range change, transportation change. (There is no processing charge when the request coincides with regular renewal of license.)

i. Capacity increase is effective when the following is received and approved by the bureau: written, signed request; fee; state fire approval; city fire approval (if applicable); state health approval; and measurement of the additional space by the bureau.

ii. Transportation addition is effective when the following is received and approved by the bureau: written, signed request; fee; copy of appropriate driver's license(s); and insurance.

iii. Name change, age range change, and addition of nighttime care is effective when the request and fee are received and approved.

iv. Change in director/director designee does not require a fee; however, documentation of qualifications and three reference letters are needed in order to process the request.

b. A processing fee of \$5 for issuing a duplicate license with no changes.

#### C. Relicensing

1. The annual relicensing survey is similar to the original licensing survey. Documentation of the previous 12 months' activity shall be available for review. The director will have an opportunity to review the survey deficiencies (if any).

2. A license is issued for a period of up to one year based upon provider's compliance with minimum standards. Before expiration of the license, re-inspections by the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal, Code Enforcement and Building Safety; City Fire (if applicable) and the Bureau of Licensing shall be required.

3. If the survey reveals that the provider is not meeting minimum requirements, a recommendation will be made to the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies that the license be revoked or not renewed.

4. The bureau shall be notified prior to making changes which may have an effect upon the license, e.g., age range of children served, usage of indoor and outdoor space, director, hours/months/days of operation, transportation, etc.

D. Denial, Revocation or Non-Renewal of License. An application for a license may be denied, or a license may be revoked, or renewal denied, for any of the following reasons:

1. violation of any provision of R.S. 46:1401 et seq. or failure to meet any of the minimum standards, Rules, regulations or orders promulgated by the Department of Social Services;

2. cruelty or indifference to the welfare of the children;

3. conviction of or a plea of guilty or nolo contendere of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim,

a. or, if the applicant is a firm or corporation, any of its board members or officers;

b. or, the person designated to manage or supervise the center;

4. hiring or continued employment of any individual (paid or non-paid staff) convicted of a felony or a plea of guilty or nolo contendere of a felony or any offense of a violent or sexual nature or any offense involving a juvenile victim;

5. if the owner or director of the center is not reputable;

6. if the owner, director or a member of the staff is temperamentally or otherwise unsuited for the care of the children in the center;

7. history of noncompliance;

8. failure of the owner of the center to hire a qualified director;

9. disapproval from any agency whose approval is required for licensure;

10. non-payment of licensure fee and/or failure to submit application for renewal prior to the expiration of the current license;

11. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse and/or neglect if the owner is responsible or if the employee who is responsible remains in the employment of the provider;

12. the center is closed and there are no plans for immediate re-opening and no means of verifying compliance with minimum standards for licensure;

13. any act of fraud such as falsifying or altering documents required for licensure;

14. provider refuses to allow the bureau to perform mandated duties, i.e., denying entrance to the center, lack of cooperation for completion of duties, etc.;

15. presence or use of any recalled product by the provider that is listed in the newsletters issued by the Office of the Attorney General; or

16. failure to attend any mandatory training session offered by the bureau.

E. Appeal Procedure. If the license is refused, revoked or denied because the provider does not ensure the compliance with the minimum requirements for licensure, the procedure is as follows.

1. The Department of Social Services, Bureau of Licensing, shall advise the director by certified letter of the

reasons for refusal, revocation, or denial and the right of appeal.

2. The director may appeal this decision by submitting a written request with the reasons to the Secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P. O. Box 2944, Baton Rouge, LA 70821-9118. This written request shall be post-market within 30 days of the director's receipt of the above notification.

3. The Bureau of Appeals shall set a hearing within 30 days after receipt of such a request. An appeals hearing officer shall conduct the hearing. Within 90 days after the date the appeal is filed, the hearing officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the appeal is denied, the provider shall terminate operation of the center immediately.

4. If the provider continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the center is located for injunctive relief.

F. Required Notification. Within 24 hours or the next workday, the director shall notify the bureau of the following reportable incidents. A verbal report is to be followed by a written report:

1. any death of a child while in the care of the provider;

2. any illness or injury requiring hospitalization or professional medical attention other than first aid of a child while in the care of the provider;

3. any fire;

4. any structural disaster;

5. any emergency situation that requires temporarily relocating children;

6. any unusual situation which affects the care of a child or children, e.g. child left unsupervised in the center, on the van, in play yard, on field trip, extended loss of power, water service, gas, etc.; or

7. any child leaving the center unsupervised or with an unauthorized person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

#### §5304. Definitions

**Anniversary** Center's licensure year, determined by the month in which the initial license was issued to the provider/center and in which the license is eligible for renewal each year.

**Bureau** the Bureau of Licensing of the Department of Social Services.

**Capacity** the number of children the provider is licensed to care for at any given time based on usable indoor and outdoor square footage as determined by the bureau.

**Center** a child care facility as defined in Section 5302.A.1.

**Center Staff** all full or part-time paid or non-paid staff who perform routine services for the child care center and have direct or indirect contact with children at the center. Center staff includes the director, child care staff, and any

other employees of the center such as the cook, housekeeper, driver, substitutes, and foster grandparents excluding extra-curricular personnel.

**Change of Location**Cchange of physical address of facility.

**Change of Ownership**Ctransfer of ownership to someone other than the owner listed on the initial application. Ownership of the center business, not the building, determines the owner. Sale of a corporation also constitutes a change of ownership. Leasing of a child care business is not considered a change of ownership, but an initial application.

**Clock Hour**Cinvolvement or participation in a learning situation for 60 minutes.

**Comparable Setting**Cpre-k, kindergarten, first grade, or a registered family day home.

**Department**Cthe Department of Social Services of the State of Louisiana.

**Direct Supervision**Cvisual contact at all times.

**Director**C

**Center Director**Cthe on-site staff who is responsible for the day-to-day operation of the center as recorded with the Bureau of Licensing. For the purpose of these regulations the term director means center director or director designee, if applicable.

**Director Designee**Cthe on-site individual appointed by the director when the director is not an on-site employee at the licensed location. This individual shall meet director qualifications.

**Executive Director**Cthe owner or administrator. If on-site and responsible for the management, administration and supervision of the center, the executive director is also the center director. If not on-site or not functioning as center director, the executive director maintains responsibility for the management, administration and supervision of the center(s) through a center director or director designee.

**Discipline**Cthe ongoing positive process of helping children develop inner control so that they can manage their own behavior in an appropriate and acceptable manner by using corrective action to change the inappropriate behavior.

**Documentation**Cwritten evidence or proof, signed and dated by parties involved (director, parents, staff, etc.), on site and available for review.

**Existing Center**Ca provider with a valid license at a particular location prior to the effective date of these standards.

**Extra-Curricular Personnel/Therapeutic Professionals**C individuals who are not employees of the center, but who come to the center to provide therapy, services, or enrichment activities for an individual child or group of children. Examples: computer instructor, dance instructor, librarian, tumble bus personnel, therapeutic personnel (occupational therapist, physical therapist, speech therapist), nutritionist, early interventionist, nurse.

**Group**Cthe number of children assigned to a caregiver or team of caregivers occupying an individual classroom or well-defined space within a larger room on a consistent or daily basis.

**Medication**Call internal and external drugs, whether over-the-counter or prescribed. Medications include oral, inhalant, topical ointments, sprays, creams, etc.

**Montessori School**Ca facility accredited as a Montessori School by the Board of Elementary and Secondary Education under La. R.S. 17:3401 et seq.

**Nighttime Care**Ccare provided after 9:00 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

**Owner or Provider**Ca public or private organization or individual who delivers child care services for children.

**Parent**Cparent(s) or guardian with legal custody of the child.

**Posted**Cprominently displayed in a conspicuous location in an area accessible to and regularly used by parents.

**Shall or Must**Cmandatory.

**Should**Curged, advised or may.

**Staff-in-Charge**Cthe on-site staff appointed by the director as responsible for supervising the operation of the center during the temporary absence of the director.

**Student Trainee**Can individual who observes in the center as a course requirement, is never left alone with children, nor counted in the child/staff ratio.

**Temporary Absence**Cabsence for errands, conferences, etc.

**Transportation**Carranging or providing transportation of children for any reason including field trips and transportation by contract.

**Water Activity**Ca water-related activity in which children, under adult supervision, are in, on, near, or immersed in a body of water such as swimming pools, wading pools, water parks, lakes, rivers or beaches, etc.

**Visitor**Canyone who enters the facility other than center staff, therapeutic professionals, extracurricular personnel, and in the case of a church or school, any other routine employees such as a pastor, principal, teacher, etc.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5305. General Requirements**

A. A Louisiana child care license with current information and current expiration date shall be on display in an area accessible to and regularly used by parents and visitors, except for church affiliated centers (R.S. 46:1408.D) that choose to keep the license on file and available upon request.

B. The provider shall maintain in force at all times current commercial liability insurance for the operation of a center to ensure medical coverage for children in the event of accident or injury. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, physical address of the facility, name of the insurance company, policy number, period of coverage and explanation of the coverage.

C. Parents shall not be required to waive the provider's responsibility.

D. The provider shall have documentation of yearly sanitation inspection and current approval from the Office of Public Health, Sanitarian Services. If food is catered or transported, approval is needed from the health department.

E. The provider shall have documentation of yearly safety inspection and current approval from the Office of State Fire Marshal.

F. The provider shall have documentation of yearly safety inspection and current approval from the City Fire Department (if applicable).

G. The provider shall have certificate of occupancy (zoning), if applicable.

H. A daily attendance record for children, completed by the parent or center staff, including the time of arrival and departure of each child and the name of the person to whom the child was released, shall be maintained. This record shall accurately reflect the children on the child care premises at any given time. If the record is completed by center staff, that individual shall write the first and last name of the person to whom the child was released and sign his/her own name. Children who leave and return to the center during the day shall be signed in/out. A computerized sign in/out procedure is acceptable if the record accurately reflects the time of arrival and departure as well as the name of the person to whom the child was released.

I. A daily attendance record for staff, including the director/owner, to include the time of arrival and departure shall be maintained. Direct care staff shall document in/out when not on the child care premises. This record shall accurately reflect persons on the child care premises at any given time.

J. The provider shall have an individual immediately available in case of emergency. The name and telephone number of the emergency person shall be posted near the telephone.

K. Any visitor to the center shall be accompanied by a staff person at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5306. Policies and Procedures Related to Children**

A. Prior to admission, the director, in consultation with the parent, shall determine that the individual needs of each child can adequately be met by the center's program and facilities.

B. A schedule of the day's plan of activities, allowing for flexibility and change, shall be posted. The program of activities shall be age-appropriate and shall be adhered to with reasonable closeness, but shall accommodate and have due regard for individual needs and differences among the children. The program shall provide time and materials for both vigorous and quiet activities for children to share or to be alone, indoor and outdoor play, and rest. Regular time shall be allowed for routines such as washing, lunch, rest, snacks and putting away toys. Active and quiet periods shall be alternated so as to guard against over-stimulation of the child.

C. Programs/movies with violent or adult content (including soap operas) shall not be permitted in the presence of children.

D. Children five years and younger shall have a daily rest period of at least one hour. Providers that serve children in half-day programs are not required to schedule napping periods for these children.

E. While awake, children shall not remain in a crib/baby bed, swing, highchair, carrier, playpen, etc. for more than 30 consecutive minutes.

F. Discipline. The provider shall establish a policy in regard to methods of discipline. Any form of punishment that violates the spirit of this standard of discipline, even though it may not be specifically mentioned as forbidden, is prohibited. This written posted policy shall clearly state ALL types of positive discipline that are used and that the following methods of discipline are prohibited:

1. No child shall be subject to physical punishment, corporal punishment, verbal abuse or threats.

2. Cruel, severe, unusual, or unnecessary punishment shall not be inflicted upon children.

3. Derogatory remarks shall not be made in the presence of children about family members of children in care or about the children themselves.

4. No child or group of children shall be allowed to discipline another child.

5. When a child is removed from the group for disciplinary reasons, he shall never be out of sight of a staff member.

6. No child shall be deprived of meals or snacks or any part thereof for disciplinary reasons.

#### **G Abuse and Neglect**

1. As mandated reporters, all center staff shall report any suspected abuse and/or neglect of a child in accordance with R.S. 14:403 to the local child protection agency. This written policy as well as the local child protection agency's telephone number shall be posted.

#### **H. Complaint Procedure**

1. Parents shall be advised of the licensing authority of the bureau along with the current telephone number and address. Parents shall also be advised that they may call or write the bureau should they have significant, unresolved licensing complaints. This written policy as well as the current telephone number and address of the bureau shall be posted.

#### **I. Open Door Policy**

1. Parents shall be informed that they are welcome to visit the center anytime during regular hours of operation as long as their child is enrolled. This written policy shall be posted.

#### **J. Non-discrimination Policy**

1. Discrimination by child care providers on the basis of race, color, creed, sex, national origin, handicapping condition or ancestry is prohibited. This written policy shall be posted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:



### **§5307. Children's Records**

A. A record shall be maintained on each child to include:

1. child's information form (mastercard) listing the child's name, birth date, sex, date of admission, name and phone number of child's physician and dentist, dietary restrictions, and allergies; signed and dated by the parent;

2. parental authorization to secure emergency medical treatment;

3. signed agreements between the provider and the parent for each child giving permission to release the child to a third party listed by the parent including any other child care facilities or transportation services. A child shall never be released to anyone unless authorized in writing by the parent;

4. signed agreements between the provider and the parent to transport the child. Daily trip authorization shall include name of child, type of service (i.e., to and from home, to and from school), parent's signature and date.

B. The provider shall maintain the confidentiality and security of all children's records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to any unauthorized person.

C. The provider shall obtain written, informed consent from the parent prior to releasing any information, recordings and/or photographs from which the child might be identified, except for authorized state and federal agencies.

D. The provider utilizing any type of recordings or taping of children including but not limited to digital recordings, videotaping, audio recordings, web cam, etc. shall obtain documentation signed and dated by the parent indicating their awareness of such recordings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5308. Retention of Records**

A. Documentation of the previous 12 months' activity shall be available for review. Records shall be accessible during the hours the facility is open and operating.

B. For licensing purposes, children's information shall be kept on file a minimum of one year from date of discharge from the center.

C. For licensing purposes, personnel records shall be kept on file a minimum of one year from termination of employment from the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5309. Required Staff**

A. Each center shall have a qualified director who is an on-site full-time employee at the licensed location and is responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental

concerns and ensuring that minimum licensing requirements are met. When the director is not an on-site full-time employee at the licensed location, there shall be a qualified director designee who is an on-site full-time employee responsible for planning, managing, and controlling the center's daily activities, as well as responding to parental concerns and ensuring that minimum licensing requirements are met.

B. When the director or director designee is not on the premises due to a temporary absence, there shall be an individual appointed as staff-in-charge who is at least 21 years of age. This staff shall be given the authority to respond to emergencies, inspections/inspectors, parental concerns, and have access to all required information.

C. If the number of children in care exceeds 42, the director/director designee's duties shall consist only of performing administrative functions.

D. There shall be regularly employed staff who are capable of fulfilling job duties of the position to which they are assigned.

E. Adequate provisions for cooking and housekeeping duties shall be provided. These duties shall not interfere with required supervision of children or required child/staff ratios.

F. There shall be provisions for substitute staff who are qualified to fulfill duties of the position to which they are assigned.

G. Child care staff shall be age 18 years or older. The provider may, however, include in the staff-child ratio, a person 16 or 17 years old who works under the direct supervision of a qualified adult staff. No one under age 16 shall be used as child care staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5310. Director Qualifications**

A. The director/director designee shall be at least 21 years of age.

B. The director/director designee shall have documentation of at least one of the following upon date of hire as director or director designee:

1. a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education and one year of experience in a licensed child care center or comparable setting, subject to approval by the bureau;

2. an Associate of Arts degree in child development or a closely related area, and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

3. a National Administrator Credential as awarded by the National Child Care Association, and one year experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

4. a Child Development Associate Credential (CDA) and one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

5. diploma from a post secondary technical early childhood education training program approved by the

Board of Regents or child care education certificate program, plus one year of experience in a licensed child care center, or comparable setting, subject to approval by the bureau;

6. Three years of experience as a director or staff in a licensed child care center, or comparable setting, subject to approval by the bureau; plus six credit hours in child care, child development, or early childhood education or 90 "clock hours" of training approved by the bureau. Up to three credit hours or 45 clock hours may be in management/administration education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5311. Personnel Records**

A. A record for each paid and non-paid staff person, including substitutes and foster grandparents shall be on file at the center. Personnel record shall include:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth;
- c. address and telephone number;
- d. previous training/work experience;
- e. educational background; and
- f. employee's starting and termination date;

2. documentation of three current, positive reference checks or telephone notes signed and dated. These references shall be obtained from persons not related to the employee;

3. written job descriptions for every position at the center;

4. a written statement of good health signed by a physician or designee. Health statement dated within three months prior to offer of employment or within one month after date of employment is acceptable. A health statement is required every three years. Originals shall be presented upon request;

5. documentation of a satisfactory criminal record check, as required by R.S.15:587.1. Provider shall request this clearance prior to the employment of any center staff. A criminal record clearance is not transferable from one employer to another. No staff with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim shall be employed in a Class "A" child care center.

B. The following information shall be kept on file for therapeutic professionals and extracurricular personnel, e.g. computer instructor, dance instructor, librarian, tumble bus personnel, etc.:

1. documentation of a satisfactory criminal record check, as required by R.S.15:587.1. Provider shall request this clearance prior to individual being present in the center. No individual with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim shall be in a Class "A" child care center. Note:

Individuals employed by the school system may have on file at the center, a letter from school system administrative staff documenting that a criminal record check has been completed through Louisiana State Police;

2. documentation of their presence at the facility to include:

- a. name;
- b. date of visit;
- c. arrival and departure times; and
- d. reason in center.

C. The following information shall be kept on file at the center for each student trainee:

1. an application and/or a staff information form with the following:

- a. name;
- b. date of birth; and
- c. address and telephone number;

2. job descriptions to include job duties to be performed and name of supervisor;

3. documentation of their presence at the facility to include:

- a. name;
- b. date of visit;
- c. arrival and departure times; and
- d. reason in center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5312. Staff Development and Training**

A. Orientation Training

1. Within one week of employment and prior to having sole responsibility for a group of children, each staff member, including substitutes and foster grandparents, shall receive orientation training to include the following topics:

- a. center policies and practices including health and safety procedures;
- b. emergency and evacuation plan;
- c. supervision of children;
- d. discipline policy;
- e. job description;
- f. individual needs of the children enrolled;
- g. detecting and reporting child abuse and neglect;
- h. current Child Care Class "A" Minimum Licensing Standards; and
- i. confidentiality of information regarding children and their families.

2. This training shall be followed by four days of supervised work with children. Documentation shall consist of a statement/checklist in the staff record signed and dated by the staff person and director, attesting to having received such orientation training, and the dates of the supervised work with children.

B. Quarterly Training

1. The director shall conduct, at a minimum, one staff training session/meeting every three months. Documentation shall consist of the date of the training session, training topics, and signatures (not initials) of all staff in attendance.

C. Annual Review

1. All staff, including substitutes and foster grandparents, shall have a signed and dated checklist/statement that the following topics are annually reviewed:

- a. center policies and practices including health and safety procedures;
- b. emergency and evacuation plan;
- c. supervision of children;
- d. discipline policy;
- e. job description;
- f. individual needs of the children enrolled;
- g. detecting and reporting child abuse and neglect;
- h. current Child Day Care Class "A" Minimum Standards;
- i. confidentiality of information regarding children and their families.

#### D. Continuing Education

1. The director shall provide opportunities for continuing education of staff through attendance at child care workshops or conferences, for paid and non-paid staff who are left alone with children, or who have supervisory or disciplinary authority over children. The child care staff, excluding foster grandparents, shall obtain 12 clock hours of approved training per center's anniversary year in job related subject areas. At least three of the 12 clock hours of training for directors/director designees shall be in administrative issues. Documentation shall consist of attendance records or certificates received by staff. This is in addition to the required training hours from the Department of Health and Hospitals, pediatric first aid and infant/child/adult CPR. Medication administration training by a Child Care Health Consultant may count toward fulfilling three of the mandated 12 hours of continuing education training. All training shall have prior approval by the Department of Social Services. Original certificates shall be made available upon request.

2. Cooks or drivers who are neither left alone with children, nor have supervisory nor disciplinary authority over children shall complete at least three clock hours of training in job related topics per center's anniversary year.

#### E. CPR and First Aid

1. A minimum of at least 50 percent of all staff on the premises and accessible to the children at all times shall have documentation of current infant/child/adult certification in CPR. Original cards shall be made available upon request. This training shall be approved by the Department of Social Services prior to acceptance.

2. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in approved infant/child/adult CPR in each building and on each floor of the center.

3. A minimum of at least 50 percent of all staff on the premises and accessible to children shall have documentation of current pediatric first aid certification. Original cards shall be made available upon request. This certification shall be approved by the Department of Social Services prior to acceptance.

4. Centers with multiple buildings or floors, however, shall have at least one currently certified staff in approved pediatric first aid in each building and on each floor of the center.

5. At least one staff in each vehicle (center provided or contract) shall have documentation of current infant/child/adult CPR certification and pediatric first aid certification.

6. At least 50 percent of the supervising staff on the field trip shall have documentation of current infant/child/adult CPR certification and pediatric first aid certification.

7. Non-vehicular excursions shall require at least one staff in attendance and accessible to children at all times with documented current certification in infant/child/adult CPR and pediatric first aid.

#### F. Emergency Procedures

1. The director shall ensure that written procedures for emergencies and evacuation as appropriate for the area in which the center is located such as fire, flood, tornado, hurricane, chemical spill, train derailment, etc. are available.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

#### §5313. Water Activities

A. The provider shall obtain written authorization from the parent for the child to participate in any water activity. The statement shall describe all types of water activities provided and the authorization shall be updated at least annually and shall list the child's name, type of water activity, location of water activity, parent's signature and date.

B. On-site and off-site wading/swimming pool, or other water activities shall require at least two staff or other supervising adults to be trained in infant/child/adult CPR and pediatric first aid. One supervising adult shall be trained in an approved community water safety course. Providers who have wading pools with a depth of less than two feet shall not be required to have a staff with community water safety training.

1. If children are taken to off-site water activities, documentation shall be on file at the center that the director has verified that the supervising adult meets the above requirements or the lifeguard on duty is currently certified.

2. The provider shall ensure that appropriate water safety devices are used when children are participating in water activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29

#### §5315. Required Child/Staff Ratios

A. Child/staff ratios are established to ensure the safety of all children. Only those staff members directly involved in child care and supervision shall be considered in assessing

child/staff ratio. Required staff shall be present in the center to meet the child/staff ratios as indicated below; however, there shall always be a minimum of two child care staff present during hours of operation when children are present.

Child/Staff	
Ages of Children	Ratio
Infants under 12 months	5:1
One year old	7:1
Two year old	11:1
Three year old	13:1
Four year old	15:1
Five year old	19:1
Six year old and up	23:1

1. An average of the child/staff ratio may be applied to mixed groups of children ages two, three, four, and five. Ratios for children under two or over five years old are excluded from averaging. When a mixed group includes children less than two years of age, the age of the youngest child determines the ratio for the group to which the youngest child is assigned. When a mixed group includes children both older and younger than six years old and older, the ages of the children less than six determine the ratio for the group.

2. During naptime, required staffing shall be present in the center to satisfy child/staff ratios.

B. Child/staff ratio plus one additional adult shall be met for all field trips and non-vehicular excursions.

C. A designated number of children shall relate daily to a designated staff on a regular and consistent basis.

D. When the nature of a special need or the number of children with special needs warrants added care, the provider shall add sufficient staff as deemed necessary by the bureau to compensate for these needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

**§5317. Supervision**

A. Children shall be under direct supervision at all times including naptime. Children shall never be left alone in any room or outdoors without a staff present. Children, excluding infants, may be grouped together at naptime with one staff supervising the children sleeping. All children sleeping shall be in the sight of the naptime worker.

B. While on duty with a group of children, child care staff shall devote their entire time in supervision of the children, in meeting the needs of the children, and in participation with them in their activities.

C. Individuals who do not serve a purpose related to the care of children and/or hinder supervision of the children shall not be present in the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau

of Licensing, LR 20:450 (April 1994), IR 24:2345 (December 1998), LR 29:

**§5319. Food Service and Nutrition**

A. Well-balanced and nourishing meals and snacks shall be provided as specified under the Child Care Food Program of the United States Department of Agriculture (See Appendix A).

B. Additional servings of nutritious food over and above the required daily minimum shall be made available to children as needed if not contraindicated by special diets.

C. Meals and snacks shall be served at 2 1/2 to 3-hour intervals.

D. Current weekly menus for meals and snacks listing specific food items served shall be prominently posted. Menu substitutions shall be recorded on or near the posted menu.

E. Children's food shall be served on individual plates, napkins, paper towels or in cups, as appropriate.

F. Providers who do not serve breakfast shall have food available for children arriving in the morning without having eaten this meal.

G. Food shall not be sold to the children. Soft drink vending machines and other food dispensers for personnel use shall be located outside of the children's play areas.

H. Infants shall be held while being bottle-fed. An infant or any child who can hold a bottle shall not be placed in a crib, on a mat, cot, etc. with the bottle unless written permission is obtained from the parent.

I. A bottle shall not be propped at any time.

J. Daily written reports to include liquid intake, food intake, child's disposition, bowel movements, eating and sleeping patterns shall be given to parents of infants.

K. Microwave ovens shall not be used for warming infant bottles or infant food.

L. Developmentally appropriate equipment shall be used at mealtimes, such as feeding tables, highchairs, etc.

M. Drinking water shall be available indoors and outdoors to all children. Drinking water shall be offered at least once between meals and snacks to all children. Water shall be given to infants only with written instructions from parents.

N. Children are not allowed to bring food into the center except under the following circumstances.

1. Bottled formula for infants supplied by the parent shall have labeled bottles and labeled caps/covers with the child's name or initials and refrigerated upon arrival.

2. Baby food supplied by the parent shall be in the original unopened container and labeled with the child's name or initials.

3. When a child requires a special diet, a written statement from a medical authority shall be on file.

4. Children with food allergies/intolerance shall have a written statement signed by the parent indicating the specific food allergy/intolerance.

5. When a child requires a modified diet for religious reasons, a written statement to that effect from the child's parent shall be on file.

6. Refreshments for special occasions such as birthday parties and holidays, with prior approval from the director may be served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

**§5321. Health Service to the Child**

A. A provider that gives medication assumes additional responsibility and liability for the safety of the children. The staff person(s) administering medication shall be trained in medication administration. The training shall be obtained every two years.

B. No medication of any type, prescription, non-prescription, special medical procedure shall be administered by center staff unless authorized in writing by the parent. Authorization shall include:

1. child's name;
2. name of the medication;
3. date(s) to be administered;
4. dosage;
5. time to be administered;
6. special instructions, if applicable;
7. side effects;
8. signature of parent and date of signature; and
9. circumstances for administering "as needed" medication.

C. Medication or medical procedures to be provided on an as needed basis or maintenance prescription shall be updated as changes occur, or at least every three months by the parent.

D. All medication sent to the center shall be in its original container, shall not have an expired date, and shall be clearly labeled with the child's name to ensure that medication is for individual use only.

E. The provider shall follow any special directions as indicated on the medication bottle, i.e., before or after meals, with food or milk, refrigerate, etc.

F. If medication label reads "to consult physician," a written physician authorization with child's name, date, medication name and dosage must be on file in order to administer the medication in addition to the parental authorization.

G. Medication administration records shall be maintained verifying that the medication was given according to parent's authorization, which includes:

1. date;
2. time;
3. dosage administered;
4. signature (not initials) of the staff member who gave the medication; and
5. phone contact (date and time) with the parent prior to giving "as needed" medication.

H. When parents administer medication to their own children on the child care premises, the following information shall be documented:

1. date;
2. child's name;
3. time administered;
4. medication name;
5. dosage administered;
6. side effects; and
7. name of person administering medication.

I. The provider shall not apply topical ointments/sprays/creams (i.e. sunscreen, insect repellent, diaper rash ointment, etc.) without a written one-time authorization signed and dated from the parent, unless changes occur.

J. Upon arrival at the center, each child shall be observed for possible signs of illness, infections, bruises, injuries, physical condition, etc. When noted, results including an explanation from parent and/or child shall be documented.

K. Incidents of injuries or accidents shall be documented. Documentation shall include name of child, date and time of incident, location where incident took place, description of how incident occurred, part of body involved, and actions taken. Documentation of all injuries/accidents shall include time of parental notification and signature of person notifying the parent. The parent or designated person shall be notified immediately in the following situations:

1. blood not contained in an adhesive strip;
2. head injury;
3. human bite which breaks the skin;
4. any animal bite;
5. an impaled object;
6. broken or dislodged teeth; or
7. any injury requiring professional medical attention.

L. Documentation of illnesses or unusual behavior shall be maintained. Documentation shall include child's name, type/description of illness or unusual behavior, date and time of onset and actions taken, time of parental notification and signature of person notifying the parent. The parent or designated person shall be notified immediately in the following situations:

1. allergic reaction;
2. skin changes e.g. rash, spots, swelling, etc.;
3. unusual breathing;
4. dehydration;
5. any temperature reading above normal; or
6. any illness requiring professional medical attention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

**§5323. Physical Environment**

A. Indoor Space Required

1. The center shall be used exclusively by the children and center staff during operating hours. Area licensed for use as a child care center shall not be dually licensed. A child care facility, except those located in a church or school, shall be physically separated from any other business or enterprise.

2. A minimum of at least 35 square feet per child of indoor space shall be available. The space shall not include toilet facilities, hallways, lofts, storage or food preparation areas, or offices. Any room counted as play space shall be available for play during play hours. If rooms are used exclusively for dining or sleeping, they cannot be included in the licensed capacity.

3. For indoor space, the number of children using a room shall be based on the 35 square feet per child

requirement except for group activities such as film viewing, parties, dining and sleeping.

4. Provisions shall be available indoors for temporarily isolating a child having or suspected of having a communicable disease so he/she can be removed from the other children. Movable partitions are permissible so that the space may be used for play when not needed for isolating an ill child.

5. An indoor area shall be maintained for the purpose of providing privacy for diapering, dressing and other personal care procedures for children beyond the usual diapering age.

#### B. Outdoor Space Required

1. Outdoor play space with a direct exit from the center into the outdoor play yard shall be available.

2. The outdoor space shall provide a minimum of 75 square feet for each child in the outdoor play space at any one time. The minimum outdoor play space shall be available for at least one-third of the licensed capacity.

3. The outdoor play space shall be enclosed with a fence or other barrier in such a manner as to protect the children from traffic hazards; to prevent the children from leaving the premises without proper supervision; and to prevent contact with animals or unauthorized persons.

4. Crawlspace and mechanical, electrical, or other hazardous equipment shall be made inaccessible to children.

5. Areas where there are open cisterns, wells, ditches, fish ponds and swimming pools or other bodies of water shall be made inaccessible to children by fencing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### §5325. Furnishings and Equipment

A. A working telephone capable of incoming and outgoing calls shall be available at all times and readily available at the center. Coin operated telephones or cellular telephones are not acceptable for this purpose.

B. When a center has multiple buildings and a telephone is not located in each building where the children are housed, a written plan shall be posted in each building for securing emergency help.

C. Appropriate emergency numbers such as fire department, police department, and medical facility shall be prominently posted on or near the telephone.

D. The telephone number for poison control shall be prominently posted on or near the telephone.

E. The center's physical address shall be posted with the emergency numbers.

F. All equipment and materials shall be appropriate to the needs and ages of the children enrolled.

G. All play equipment and equipment necessary for the operation of the center shall be maintained in good repair.

H. Play equipment of sufficient quantity and variety for indoor and outdoor use encouraging physical play and quiet play/activities which is appropriate to the needs and ages of the children shall be provided.

I. Low, open shelves, bins, or other open containers shall be within easy reach of the children for the storage of play materials in each play area.

J. Individual, labeled space shall be available for each child's personal belongings.

K. Chairs and table space of a suitable size shall be available for each child two years of age or older.

L. Individual and appropriate sleeping arrangements shall be provided for each child. Each child shall be provided with a cot, mat, or crib (baby bed) of appropriate size, height, and material, sufficient to ensure his/her health and safety. Each infant shall have a crib separated from all other cribs (non-stackable). Playpens shall not be substituted for cribs.

M. Mats may be used only if the area used for napping is carpeted or if the center is centrally heated and cooled. If mats are used, they shall be of adequate size and material to provide for the health and safety of the child.

N. Each child's sleeping accommodations shall be assigned to him/her on a permanent basis and labeled.

O. Sheets for covering the cot or mat shall be provided by either the provider or the parent, unless the cots or mats are covered with vinyl or another washable surface.

P. Sheets and coverings shall be changed immediately when soiled or wet.

Q. A labeled sheet or blanket shall be provided by either the provider or the parent for covering the child.

R. Cribs, cots, or mats shall be spaced at least 18 inches apart.

S. Cribs shall have spaces between crib slats of no more than two and three-eighths inches.

T. Infant bed railings shall be in the up and locked position at all times when the child is in the bed.

U. Trampolines are prohibited.

V. Infant walkers are prohibited.

W. Toy chests with attached lids are prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### §5327. Safety Requirements

A. Prescription and over-the-counter medications, poisons, cleaning supplies, harmful chemicals, equipment, tools and any substance with a warning label stating it is harmful or that it should be kept out of the reach of children, shall be locked away from and inaccessible to children. Whether a cabinet or an entire room, the storage area shall be locked.

B. Refrigerated medication shall be stored in a secure container to prevent access by children and avoid contamination of food.

C. Construction, remodeling, or alterations of structures shall be done in such a manner as to prevent hazards or unsafe conditions (fumes, dust, safety hazards).

D. Secure railings shall be provided for flights of more than three steps and for porches more than three feet from the ground.

E. Gates shall be provided at the head or foot of each flight of stairs to which children have access.

F. Accordion gates are prohibited unless there is documentation on file that the gate meets requirements as approved by the Office of Public Health, Sanitarian Services.

G. Unused electrical outlets shall be protected by a safety plug cover.

H. Strings and cords (such as those found on window coverings) shall not be within the reach of children.

I. First aid supplies shall be kept on-site and easily accessible to employees, but not within the reach of children.

J. All areas of the center used by the children, including sleep areas, shall be properly heated, cooled, and ventilated.

K. Areas used by the children shall be lighted in such a way as to allow visual supervision of the children at all times.

L. The center and yard shall be clean and free from hazards.

M. The provider shall prohibit the use of alcohol, tobacco, and the use or possession of illegal substances or unauthorized potentially toxic substances, fireworks, firearms, pellet or BB guns (loaded or unloaded) on the child care premises. This notice shall be posted.

N. The provider shall post "The Safety Box" newsletter issued by the Office of the Attorney General as required by Chapter 55 of Title 46 of the R.S. 46:2701–2711.

O. Fire drills shall be conducted at least once per month. These shall be conducted at various times of the day and night (if nighttime care is provided) and shall be documented. One fire drill every six months shall be held at naptime. Documentation shall include:

1. date and time of drill;
  2. number of children present;
  3. amount of time to evacuate the center;
  4. problems noted during drill and corrections noted;
- and
5. signatures (not initials) of staff present.

P. The entire center shall be checked after the last child departs to ensure that no child is left unattended at the center. Documentation shall include date, time, and signature of staff conducting the visual check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5329. Non-Vehicular Excursions**

A. Written parental authorization shall be obtained for all non-vehicular excursions. Authorization shall include the name of child, type and location of activity, date and signature of parent, and shall be updated at least annually.

B. The provider shall maintain a record of all non-vehicular excursions activities to include date, time, list of children, staff, and other adults, and type of activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau

of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### **§5331. General Transportation (Contract, Center Provided, Parent Provided)**

A. Providers who transport or arrange transportation of children assume additional responsibility and liability for the safety of the children. Whether transportation is provided on a daily basis or for field trips only, these general regulations shall apply. Transportation arrangements shall conform to state laws, including seat belts and child restraints.

B. Only one child shall be restrained in a single safety belt.

NOTE: For additional information regarding state laws, contact Office of Public Safety.

C. The driver or attendant shall not leave the children unattended in the vehicle at any time.

D. Each child shall safely board or leave the vehicle from the curb side of the street and/or shall be escorted across the street.

E. The vehicle shall be maintained in good repair.

F. The use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting children is prohibited.

G. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

H. The provider shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles (staff, contracted persons, parents) used to transport children.

I. The provider shall maintain in force at all times current commercial liability insurance for the operation of center vehicles to ensure medical coverage for children in the event of accident or injury. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment. The provider is responsible for payment of medical expenses of a child injured while in the provider's care. Documentation shall consist of the insurance policy or current binder that includes the name of the child care facility, the name of the insurance company, policy number, period of coverage and explanation of the coverage. If transportation is provided by parents for field trips or transportation is provided by contract, whether daily or field trip, a copy of the current liability insurance shall be maintained on file.

J. The vehicle shall have evidence of a current safety inspection. In lieu of a visual inspection of a contracted vehicle, a signed statement by the agency representative verifying the expiration date of the current inspection is acceptable.

K. There shall be first aid supplies in each provider or contracted vehicle. First aid supplies (at least one per trip) shall be available for each field trip when parents provide transportation. In lieu of a visual inspection of a contracted vehicle, a signed statement by the agency representative verifying this information is acceptable.

L. There shall be information in each vehicle identifying the name of the director and the name, telephone number, and address of the center for emergency situations. In lieu of

a visual inspection of a contracted vehicle, a signed statement by the agency representative verifying this information is acceptable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

**§5333. Field Trips (Contract, Center-Provided, Parent Provided)**

A. All requirements for general transportation, Section 5331, also apply to field trips.

B. In addition, the following standards shall apply when transportation is provided/arranged for field trips.

1. The provider shall maintain a signed parental authorization for each field trip. Field trip authorization shall include the type of service (contract vehicle, center owned vehicle, parent vehicle) used to transport children, event, location, child's name, date and time of event, parent's signature and date.

2. At least two staff, one of whom may be the driver, shall be in each vehicle unless the vehicle has a communication device and child/staff ratio is met in the vehicle.

3. The provider shall maintain a record of all field trips taken, to include date and destination, list of passengers (children, parents, staff) (going & returning) and method of transportation.

4. If transportation is provided by parents, a planned route shall be provided to each driver and a copy maintained in the center.

5. Children shall be supervised during boarding and exiting vehicles by an adult who remains on the outside of the vehicle.

6. The driver or staff person shall check the vehicle and account for each child upon arrival and departure at each destination to ensure no child is left on the vehicle or at any destination. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked for each loading and unloading of children.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

**§5335. Daily Transportation (Contract or Center Provided)**

A. All requirements in general transportation, Section 5331, also apply for daily transportation.

B. In addition, the following standards all apply when daily transportation is provided/arranged.

1. A staff person shall be present when the child is delivered to the center.

2. The driver plus one staff are required at all times in each vehicle when transporting any child under five years of age.

3. When transporting children five years of age and older, the driver plus one staff person shall be in each

contracted or center provided vehicle unless the vehicle has a communication device which allows staff to contact emergency personnel, and the child/staff ratio is met in the vehicle.

4. Each driver or attendant shall be provided with a current master transportation list including each child's name, pick up and drop off locations and authorized persons to whom the child may be released. Documentation shall be maintained on file at the center whether provided by center or contract.

5. The driver or attendant shall maintain an attendance record for each trip. The record shall include the driver's name, the date, name of all passengers (children and adults) in the vehicle, the name of the person to whom the child was released and the time of release. Documentation shall be maintained on file at the center whether provided by center or contract.

6. The staff shall check the vehicle at the completion of each trip to ensure that no child is left on the vehicle. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked. Documentation shall be maintained on file at the center whether provided by center or contract.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29

**§5337. Contract Requirements**

A. The provider shall maintain a contract which is signed by the provider and a representative of the transportation agency outlining circumstances under which transportation will be provided. This written contract shall be dated, time limited and shall include verbiage in Section 5331.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1401 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

**§5339. Care for Children during Nighttime Hours**

A. All minimum standards for child care centers apply to providers who care for children after 9:00 p.m. and in which no individual child remains for more than 24 hours in one continuous stay.

B. In addition, the following standards shall apply.

1. There shall be a designated "staff-in-charge" employee who is at least 21 years of age.

2. Adequate staff shall be present in the center to meet the child/staff ratios as indicated in Section 5315; however, there shall always be a minimum of at least two staff present.

3. Meals shall be served to children who are in the center at the ordinary meal times.

4. Each child shall have a separate, age appropriate bed or cot with mat or mattress covered by a sheet for each child, as well as a covering for each child (bunk beds are not allowed).

5. There shall be a posted schedule of activities.



6. Evening quiet time activity such as story time, games, and reading shall be provided to each child arriving before bedtime.

7. Physical restraints shall not be used to confine children to bed.

8. The center's entrance and drop off zones shall be well-lighted during hours of operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:

### Family Impact Statement

1. What Effect Will this Rule Have on the Stability of the Family? This proposed Rule to revise minimum standards for licensure of Class "A" child day care facilities will have no effect on the stability of the family.

2. What Effect Will this Have on the Authority and Rights of Persons Regarding the Education and Supervision of their Children? The proposed Rule provides parents with the minimum standards required for Class "A" day care facilities. Parents can use the information in these regulations to assist them in making an informed decision when choosing a day care facility that will educate and supervise their children.

3. What Effect Will this Have on the Functioning of the Family? This Rule is not anticipated to have any effect on the functioning of the family.

4. What Effect Will this Have on Family Earnings and Family Budget? There will be no effect on family earnings and family budget.

5. What Effect Will this Have on the Behavior and Personal Responsibility of Children? A day care facility adhering to the minimum standards in this proposed Rule will be better equipped to improve the behavior and personal responsibility of children in its care.

6. Is the Family or Local Government Able to Perform the Function as Contained in this proposed Rule? The family or local government is not able to perform the function contained in this proposed Rule.

Interested persons may submit written comments within the next 20 days to Thalia Stevenson, Director, Bureau of Licensing, P. O. Box 3078, Baton Rouge, LA 70821-3078.

Public hearings on this proposed Rule will be held on Thursday, April 24, 2003 at the Secretary of State Auditorium, 8549 United Plaza Boulevard, Baton Rouge, from 10 a.m. to 12 p.m.; Friday, April 25, 2003 at the Louisiana Methodist Children and Family Services, 901 South Vienna, Ruston, from 10 a.m. to 12 p.m.; and Monday, April 28, 2003 at Delgado Community College, Student Life Center, 615 City Park Avenue, New Orleans, from 10 a.m. to 12 p.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at the public 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: Class "A" Child Day Care

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

There will be a minimal cost for printing the new regulations. A total of 3,500 copies of the regulations will be printed at approximately \$1.58 per copy (totaling \$5,530), and a cost of \$2,006 for postage to mail regulations to all currently licensed facilities. The total cost is \$7,536. There are no other implementation costs to state or local governmental units associated with this proposed Rule to adopt minimum licensing standards for Class "A" child day care facilities.

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

The Department of Social Services currently collects licensing fees from facilities that are licensed under this category. Depending on the capacity of the facility, the fees range from \$25 for 15 or fewer children up to \$250 for 101 or more children. This policy revision will not affect the amount collected from these facilities.

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

There may be some minor additional expenses to some facilities relating to the following regulations.

5310.B.6. Raising clock hours for director qualifications from 60 to 90 hours. This will not affect any current director. Any training received through resource and referral classes contracted through OFS are for a minimal charge (around \$5 per class) or free. The current regulation requiring 6 credit hours is still applicable.

5312.D.1 Clarifies 12 clock hours of approved training does not include training required by DHH in Health and Safety, Pediatric First Aid, and Infant/Child/CPR. This may cause an additional cost in training expenses for those facilities that are not currently getting those classes.

5312.E.1&2 Requires at least 50 percent of the staff on the premises and accessible to children have current infant/child/adult training in CPR (up from a minimum of two staff). Many facilities are already meeting this standard. The cost of the class varies by teacher and by the number of staff taking the class.

5335B.2. Requires two adult staff at all times when transporting any child under five years of age, for daily transportation. This may require additional staff pay for the time spent delivering children to and from home.

Currently, there are 1,533 licensed Class "A" facilities statewide. These facilities have a combined capacity of 101,324. Depending on the ages of the children in care, the average provider could have a staff of six teachers and a full-time director. An average facility may have additional salary expenses to cover two staff at all times in a facility and additional salary expenses to provide two staff for transporting children under the age of five. This expense will be offset by providing additional safety protection to the children in care. Additional training expenses may be incurred, but can be kept to a minimum by using resources provided by OFS.

Other revisions require changes in documentation. All proposed revisions were initiated to improve child safety and reduce provider liability.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no impact anticipated on competition or employment because the Child Care Assistance Program plans to give additional reimbursement to child care facilities based on the quality of child care. This should ease the burden of expenses for additional training. Since providers are allowed to charge for providing transportation, if there is an additional cost for staffing, they may choose to pass that expense to the families. It should be noted that no facility is required to provide transportation.

Thalia Stevenson  
Director  
0303#083

H. Gordon Monk  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of State  
Office of the Secretary of State  
Division of Archives**

**Records Management Policies and Practices  
(LAC 4:XVII.Chapters 1-15)**

The Department of State, Division of Archives, Records Management and History, in accordance with R.S. 44:405, and with the Administrative Procedure Act R.S. 49:950 et seq., hereby adopts LAC Title 4, Part XVII Records Management Policies and Practices. This text is being inserted to provide official guidance for state agencies in establishing and maintaining an active records management program as required by R.S. 44:410 et seq.

**Title 4**

**ADMINISTRATION**

**Part XVII. Records Management Policies and Practices  
Chapter 1. Agency Records Officer Designation**

**§101. Designation**

A. In compliance with R.S. 44:411, on or before July 1 of each state fiscal year, the chief executive officer of each agency, as defined by R.S. 44:402 shall designate a records officer to act as liaison between the division and the agency on all matters related to records management for the term of one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§103. Process**

A. Each agency shall communicate their records officer designation by completing form SS ARC 940 Records Officer Designation Form, (including signature of the chief executive officer and the date the designation was signed) and submitting the completed form to the state archivist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§105. Responsibilities of an Agency Records Officer**

A. Each agency should select a records officer who:

1. can communicate effectively with agency personnel and with the division's personnel;

2. has adequate knowledge of how your agency is organized and its operations;

3. has the ability to work with the agency's information services section on records management issues related to electronic records created and maintained by the agency;

4. has the authority to oversee the records management program of the agency, including:

a. the development and implementation of an agency retention schedule;

b. the compliance with Division and legal requirements for agency records;

c. the temporary storage of records at the State Records Center (if necessary) or the transfer of records for permanent storage with the State Archives (if required or requested);

d. and the processing of disposal requests and destruction of agency records as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§107. Changes in Records Officer Designees**

A. Agencies wishing to change their agency's designee before their designation period has expired, must notify the State Archivist within 30 days of such a change by completing form SS ARC 940 and noting "AMENDMENT" on top of the page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**Chapter 3. Retention Schedule Development**

**§301. Definitions**

A. Unless otherwise defined in this Chapter, the definitions for key terms in this chapter are provided in R.S. 44:402.

*Approved Retention Schedule*Ca retention schedule which has been approved by the state archivist or his designee.

*Records Series*Ca group of related or similar records, regardless of medium, that may filed together as a unit, used in a similar manner, and typically are evaluated as a unit for determining retention periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§303. Records Inventory**

A. To facilitate the development of agency retention schedules in compliance with R.S. 44:411, each agency shall:

1. review the functions and activities of their agency;

2. develop a list of records produced, received and maintained by the agency;

3. identify the inclusive dates, the medium and volume of records maintained for each record series held by the agency. This provision may be facilitated by agencies completing a records Management Inventory Form (SS ARC 960) for each record series to document their decision process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§305. Writing the Retention Schedule**

A. Each agency shall submit a draft retention schedule to the State Archives for review and approval. In developing the draft, each agency will:

1. conduct adequate research to determine the length of time each record series needs to be maintained based on their administrative, legal, fiscal, and any historical/informational value. Legal citations should be included if statutes or rules exist, on either the state or federal level, the retention of certain records series;

2. develop specific retention and disposition instructions for each records series, including transference of inactive records to an appropriate records storage facility, the maintenance of long-term or permanent records within the agency, and/or transfer of custody of permanent records to the State Archives control.

3. develop a draft retention schedule, using form number SS ARC 932, providing a brief description of the records series, suggested retention periods for each records series, recommended disposition instructions for non-permanent records, a notation for any records series that contains confidential information at the time of its creation in the remarks section and any citations used to formulate the retention value, if applicable. In the event that a subset of records are "declared" confidential due to pending investigation or similar event, a list of the records series involved should be transmitted to the State Archives within 30 days of the declaration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§307. Retention Schedule Maintenance**

A. Each agency shall review its retention schedule annually to identify any record series requiring an addition, amendment or deletion to the agency's approved schedule. Each agency shall submit an amended SS ARC 932 noting any changes to its existing retention schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§309. Retention Schedule Renewal**

A. An agency schedule, once approved by the State Archives will be valid for five years from the date of approval. Ninety days prior to the five year anniversary of a schedule's approval, each agency shall submit their schedule for renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

## **Chapter 5. Storage of Records in State Records Center**

### **§501. Definitions**

A. For the purpose of this Chapter the following definitions apply.

*Approved Records Center Box*Ca box that is 1.2 cubic feet in size, with dimensions of 15"x12"x10" and having no lids (fan fold tops only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§503. Eligibility**

A. In accordance with R.S. 44:408, the State Records Center may accept records from state agencies when they meet the following criteria.

1. The records are scheduled on an approved Records Retention Schedule.

2. The records belong to an office of the State Executive or Legislative branches of Louisiana government.

3. The records are considered inactive (not from current operational year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§505. Packing Instructions**

A. Each box containing eligible records (as listed above) must comply with the following requirements.

1. The records are boxed in an approved records center box.

2. The records in each box are from the same records series with the same retention value.

3. The records should be packed in the same order as they are filed in the agency.

4. Boxes should not contain mixed media (i.e., microfiche with paper records).

5. Approximately 1 inch of space should be left in each box to facilitate retrieval.

6. Records should not be placed on top of other records in the box.

7. The approximate weight of each box should not exceed 35 pounds.

8. Packing tape is discouraged. If utilized, it may only be used to reinforce the bottom of the box.

9. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.

10. Boxes should not contain hanging file folders, three ring binders or binder clips.

11. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§507. Labeling Instructions**

A. Each agency must assign a unique agency box number to each box to be transferred by affixing the number to the upper right hand corner of the narrow end of the box (the end of the box) and may include a brief descriptor for the records (i.e., 1997, FY2002, A-F, #1001-2500, etc.) to the left of the agency box number. This box number (and descriptor) must correspond to an entry made on the agency's transmittal forms submitted for the box.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§509. Disposal Date Cycles**

A. Records stored in the State Records Center must be assigned one of two disposal cycles. Assignment should be made based on the following criteria:

1. July Cycle. Records that are retained based on fiscal year retention periods or meet their retention period between January 1 and June 30 during a given year.

2. January Cycle. Records that are retained based on calendar year retention periods or meet their retention period between July 1 and December 31 during a given year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§511. Records Transmittal**

A. Prior to the delivery of records to the State Records Center for storage, an agency must provide the Records Center with completed Records Transmittal and Receipt forms (SS ARC 103), which will serve as an inventory sufficiently detailed to enable the Records Center to retrieve any record needed by the agency for reference.

1. A separate transmittal form (SS ARC 103) should be completed for each disposal date (i.e., January or July of a given year).

2. For each box, the agency should include the minimum information on their transmittal forms:

- a. agency box number;
- b. beginning and ending dates for the records in the box;
- c. a brief meaningful description of the contents of the box (i.e., Employees A-E, Batch 151-210);
- d. a notation if the records are on a media other than paper;
- e. a notation if any of the records contain confidential information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§513. Arranging Transfer**

A. After completing the transmittal forms for the boxes to be stored at the State Records Center, the agency shall mail or fax the transmittals to the State Records Center at least two weeks prior to the date of transfer the agency is requesting. The State Records Center will contact the agency's records officer to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§515. Delivery of Records**

A. In general, delivery dates will be set on a first come, first serve basis. The State Records Center reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the State Records Center staff or the Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§517. Ownership and Access**

A. Records stored at the State Records Center remain property of the agency depositing them at the State Records Center. Only the depositing agency's designated employees and to a limited extent, State Records Center personnel will be provided access to records stored in the State Records Center. Any requests to see an agency's records from non-authorized parties will be forwarded to the agency for written approval. A written approval must include the name of the person, the Records Center box number for the records being requested and the signature of the agency's records officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§519. Requesting Stored Records**

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Records Center by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the Records Center box number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-served basis. In the event that an agency has a true emergency, the State Records Center will try to accommodate a request for expedited service.

3. The State Records Center will contact the agency's Records Officer when the records in question are ready for review or pick-up. Upon arrival to the State Records Center, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center requires a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Records Center belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§521. Disposal of Records**

A. Twice a year the State Records Center will generate disposal requests for agency records that have met their retention periods. Such disposal requests will be forwarded to the agency records officer for agency disposal approval. The agency will have 45 days to respond to the request. The State Records Center reserves the right to return to the agency any records listed on the disposal request after the allotted 45 days has lapsed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§523. Agency Disposal Approval**

A. Once the agency receives the disposal request, the agency records officer must ascertain if any of the records listed on the request require further retention or are required for pending or on-going litigation. The records officer should consult with the agency's legal counsel if there are

any legal holds that require the records being retained for a longer duration.

1. If the records are not needed for any legal or administrative need, the agency records management officer shall sign the statement indicating that in consultation with the agency's legal counsel the records are no longer needed by the agency and may be destroyed.

2. If any record is still required by the agency, they may designate the records to be retained by noting the new disposal date requested and the reason for the extended retention. The agency may request the records be transferred back to their custody if they do not wish the records to remain in the State Records Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§525. Archival Review**

A. Prior to the destruction of any records in the State Records Center, the State Archives will review each disposal request for possible archival records. In the event that the State Archives wishes to retain some records for archival review, the State Archives will notify the agency which agency records they are transferring to the Archives acquisition section for processing. Once transferred to the State Archives the ownership of the record will transfer from the agency to the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

## **Chapter 7. Transferring Records for Inclusion in Archives Collection**

### **§701. General**

A. In accordance with R.S. 44:411, agency shall secure written approval from the state archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§703. Eligibility**

A. In accordance with R.S. 44:401, the State Archives may accept records from state agencies according to the following criteria:

1. the records are scheduled on an approved Records Retention Schedule;
2. the records have been determined to be of historical value or mandated by law to be kept as permanent records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§705. Packing Instructions**

A. For records that easily fit into archive box, each box containing eligible records as listed in §703 must comply with the following requirements.

1. The records are boxed in an approved archival box.
2. The records in each box are from the same records series with the same retention value.
3. The records should be packed in the same order as they are filed in the agency.
4. Boxes should not contain mixed media (i.e., microfiche with paper records).

5. The approximate weight of each box should not exceed 35 pounds.

6. Taping of printed descriptions to the box and use of packing tape is prohibited.

7. To further protect the records in case of fire, agencies are strongly encouraged to pack their boxes with the records facing the long (15 inch) side of the box. If records being packed are letter-sized (8 1/2" x 11") the remaining space in the back of the box, may include additional records with the records facing the short side (12 inch) end of the box.

8. Boxes should not contain hanging file folders, three ring binders or binder clips;

9. If boxes contain records in a media other than paper (i.e., microfilm, audio/video tapes), the media type should be noted on the transmittal within the description of contents section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§707. Non-Standard Sized Packing Instructions**

A. Prior to sending records that exceed 8 1/2" x 14", the submitting agency should contact the Archives Acquisitions Section for further instructions on how to pack such records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§709. Labeling Instructions**

A. For boxes donated or sent to the State Archives for permanent storage:

1. the agency must assign a unique agency number to each box to be transferred by affixing the number ONE of the long sides of the box;

2. a brief descriptor for the records (i.e., Dept of State, Correspondence 6/1/00C12/31/00; Bd of Ethics Campaign Finance Reports #98-04 through #98-100) under the box number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§711. Archives Transmittal Form Required**

A. Prior to the delivery to the State Archives, the submitting agency must provide completed Archives Transmittal Forms, which will serve as an inventory, sufficiently detailed, to enable Archives staff to retrieve records as they are needed.

1. Each transmittal form, the agency shall include:
  - a. name and address of agency;
  - b. the records officer name and official title within the agency;
  - c. contact information (phone and e-mail address) for the records officer;
  - d. any restrictions that exist for the records included on the particular form;
  - e. the total number of boxes/items to be transferred;
  - f. signature of transmitting records officer and date signed by officer;
  - g. page number and total number of pages of transmittal (i.e., Page 1 of 5).

2. For each box or item, agency shall include on the transmittal:

a. title of records series as it appears on the agency's approved retention schedule;

b. more than one box may be listed on an Archival Transmittal Form.

3. Submission and the acceptance of an Archives Transmittal Form from an agency or donor by the State Archives constitutes an Act of Donation to the State Archives by the agency or donor, and transfers all rights and ownership of the records to the State Archives.

4. The State Archives will return a signed copy of the Archival Transmittal form signed by the receiving archivist after the transmittal has been processed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§713. Arranging Transfer**

A. After completing the Archival Transmittal forms for the items to be transferred to the State Archives, the agency or donor shall transmit the forms at least one week prior to the date of transfer requested by the agency or donor. The State Archives, after reviewing the forms, will contact the agency's or donor's contact listed on the transmittal to finalize the delivery date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§715. Delivery of Records**

A. In general, delivery dates will be set on a first-come, first-served basis. The State Archives reserves the right to postpone or rearrange delivery dates or accept records of an agency in special circumstances or emergency situations, if the Archives staff or Records Management Officer Statewide determine such an action is necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§717. Long Term Records Storage**

A. Records transferred to the State Archives for permanent or long-term storage remain property of the agency depositing them with the State Archives. Only the depositing agency's designated employees and to a limited extent, Archives staff, will be provided access to records stored with the State Archives. Any requests to see an agency's records from non-authorized parties (including public records requests) will be forwarded to the owner agency for written approval. Written approval must include the name of the person authorizing the access, the person access is being granted and the archives storage box number(s) in which the record(s) are located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§719. Requesting Stored Records**

A. An agency may request access to or check out their agency's records by following the following procedures.

1. The agency must contact the State Archives by either mail, fax, phone or e-mail requesting access to or checking out a file(s) or box(es) by listing the agency box

number for the boxes being requested and providing the file name(s) if particular files are being requested.

2. Requests will be processed on a first-come, first-served basis. In the event that an agency has a true emergency, the State Archives will try to accommodate a request for expedited service.

3. The State Archives will contact the agency's records officer when the records in question are ready for review or pick-up. Upon arrival to the State Archives, agency personnel will be required to show proper identification before access to the records will be granted.

4. Records being checked out from the State Records Center require a signed check out invoice by the employee checking out the records.

5. Once the agency checks out a record, the responsibility to return the record to the State Archives belongs to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

## **Chapter 9. Destruction of Public Records**

### **§901. General**

A. In accordance with R.S. 44:411, agency shall secure written approval from the State Archivist (or his designee) prior to the disposing of any records of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§903. Scheduled Records**

A. Agencies wishing to dispose of records listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records). Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§905. Non-Scheduled Records**

A. Agencies wishing to dispose of records not listed on their agency's approved retention schedule shall submit to the State Archivist or his designee, Form SS ARC 930 (Request for Authority to Dispose of Records) and a completed Records Management Inventory Form for each non-scheduled series listed on the disposal request. Form SS ARC 930 must have the signature of either the agency's:

1. records officer as designated in LAC 4:XVII, Chapter 1; or

2. the chief executive officer; or

3. the general counsel for the agency

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§907. Destruction Authorization**

A. Once a disposal request has been received by the State Archivist (or his designee), the agency will be notified within 30 days of receipt that:

1. their disposal request has been approved;
2. their disposal request has been denied along with an explanation why approval was not granted;
3. their disposal request contains records that should be transferred to the State Archives for possible inclusion in the State Archives; or
4. their disposal request requires more research and requires an additional 30 days to issue a response to the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### §909. Legal Hold Policy

A. Each agency is required to develop and implement an internal process for placing legal holds on records that are involved in state or federal investigations and/or litigation. Agencies should submit their policy within 30 days of creation to the State Archives. The policy should address:

1. the agency's internal disposal approval process;
2. which employees are notified of a legal hold, when they are told and how they are told;
3. who is responsible for contacting possible third party vendors who may house records or data covered under a legal hold;
4. what steps should be taken by notified employees to safeguard records or data covered under a legal hold;
5. the agency's legal hold forms (including file level notice sheets) and instructions for any legal hold form/release forms created by the agency to implement the plan;
6. who within the agency has legal authority to lift the legal hold once the litigation or investigation has concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### §911. Disposal Methods

A. Once approval for disposal has been granted, an agency should dispose of the agency records in a manner acceptable to the level of confidentiality the record requires.

1. If a records series contains no information considered confidential in nature, an agency may use any acceptable disposal method including:

- a. landfill;
- b. recycling;
- c. shredding;
- d. incineration;
- e. maceration;
- f. pulverization.

2. If a records series contains information considered confidential in nature, an agency may use any of the following disposal methods:

- a. shredding;
- b. incineration;
- c. maceration;
- d. pulverization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### §913. Certificate of Destruction

A. Agencies shall document the destruction of their records by maintaining a Certificate of Destruction for all records requiring destruction approval from the State Archives. Such Destruction Certificate shall consist of either:

1. the current State Archives Certificate of Destruction form (SS ARC 933) along with the approved destruction request from the State Archives; or

2. an equivalent document that records the date the records were destroyed, the method of destruction, the approved authority to dispose of records form and the signature of at least one witness to the destruction or removal of the records. In the event that a recycling company is used for destruction, the date the records are transferred to the recycler for destruction will constitute the destruction date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

## Chapter 13. Electronic Records

### Subchapter A. Agency Responsibilities

#### §1301. Definitions

A. For the purpose of this Chapter the following definitions apply.

*Electronic Mail (E-mail)*Ca system that enables an agency to compose, transmit, receive and manage text and/or graphic electronic messages and images across networks and through gateways connecting other local area networks.

*Long-Term Record*Ca record with a total retention requirement of over 10 years but less than permanent.

*Permanent*Ca record with a total retention of life of the agency and/or the state and intended to be maintained in perpetuity.

*Short-Term Record*Ca record with a total retention requirement of 10 years or less.

*State Record*Ca record as defined by R.S. 44:402.

*Transitory*Ctransitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### §1303. General

A. The head of each agency must ensure:

1. that a program is established for the management of state records created, received, retained, used, transmitted, or disposed of on electronic media;

2. that the management of electronic state records are integrated with other records and information management records management programs of the agency;

3. that electronic records management objectives, responsibilities and authorities are incorporated into pertinent agency directives and policies;

4. that procedures are established for addressing records management requirements, including, retention, access and disposition requirements;

5. that training is provided for users of electronic records systems, in the operation, care, and handling of the information, equipment, software and media used in the systems;

6. that documentation is developed and maintained about all electronic state records in a manner adequate for retaining, reading, or processing the records and ensuring their timely, authorized disposition; and

7. that a security program for electronic state records is established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

## **Subchapter B. State Archives Imaging Policy**

### **§1305. Imaging System Survey; Compliance**

A. In accordance with R.S. 44:413, each state agency shall complete a State Archives Imaging Survey and provide any amendments to their survey in a timely manner when original information provided is no longer accurate.

1. Survey Information. Each agency shall provide the following information to the State Archives:

a. a listing of all records series maintained/managed by the system being surveyed;

b. the hardware and software being used (including model and version numbers) including total storage capacity;

c. the type and density of media being used by the system (magnetic, WORM, etc.);

d. the type and resolution of images being produced (TIFF class 3 or 4, and dpi);

e. the agency's quality control procedures for image production and maintenance;

f. the agency's back up procedures for the system and where (on-site, off-site) and how many sets of images exist;

g. the agency's migration plan for purging images from the system that have met their retention period.

2. Initial Survey Implementation. Any agency with an imaging system in operation before June 1, 2003 shall submit their survey response to the State Archives by no later than July 31, 2003.

3. New Systems. In addition to completing the Imaging System Survey, any agency implementing an imaging system on or after June 1, 2003, must contact the State Archives prior to implementation to ensure that a retention schedule, approved by the State Archives, is in place and that the system can comply with their schedule's requirements.

4. Amending Imaging Survey Response. In the event that any changes in the initial information providing on an agency's Imaging Survey response, the agency shall submit an amendment to their survey response within 90 days of the change occurring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§1307. Acceptable Means of Records Preservation**

A. In accordance with R.S. 44:410, electronic digitizing (imaging) is an acceptable means for records preservation for the maintenance of short-term state records, as defined in LAC 4:XVII.1301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§1309. Short-Term Records**

A. Agencies utilizing imaging for the creation and maintenance of short term records, may use imaging without maintaining the original or a microfilm copy of the original provided that:

1. the records series has been included on the agency's retention schedule submitted to and approved by the State Archivist or his designee;

2. a quality control inspection of the images is conducted prior to the destruction of the original source documents to ensure the visibility and accessibility;

3. the proper approval has been secured from the State Archives prior to the destruction of the original source documents;

4. the records series maintained on imaging systems are stored in such a manner as to comply with the retention requirements (like retentions on the same optical disk or subdirectory).

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:

### **§1311. Long-Term and Permanent Records**

A. In accordance with R.S. 44:410, agencies utilizing imaging for the creation and maintenance of long term and/or archival records, may use imaging for administrative purposes provided that for preservation purposes the agency either:

1. maintain the original source documents for the retention period listed on the agency's retention schedule; or

2. produce a microfilm back up of the records and store the microfilm with the State Archives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:

## **Subchapter C. Electronic Mail (E-mail) Guidelines**

### **§1321. Series Retention of E-mail**

A. E-mail should be retained based on content not on media type or storage limitations. Agencies should not encourage employees to unilaterally discard E-mail because of artificial limits on E-mail box capacities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:

### **§1323. E-Mail is Not a Records Series**

A. E-mail should not be treated as a single record series for retention scheduling purposes. E-mail should be incorporated into existing records series maintained by an agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Office of the Secretary of State, Division of Archives, LR 29:



### §1325. Types of E-Mail

A. There are two broad categories of E-mail: record and non-record, based on their administrative and retention requirements.

1. Transitory. Transitory records are records that have limited or no administrative value to the agency and are not essential to the fulfillment of statutory obligations or to the documentation of agency functions.

a. Examples. Transitory information can include the following: unsolicited and junk e-mails not related to agency work, listserv and other e-mail broadcast lists that require subscription (including newspapers), reminders for meetings and events (i.e. cake in the conference room, staff meeting moved from 2 p.m. to 3 p.m.), personal non-work related e-mails received by employees.

b. Retention. There is no retention requirement for transitory messages. Public officials and employees receiving such communications may delete them immediately without obtaining approval from the State Archives.

2. Record. Electronic mail records are records that have administrative value to the agency or are required to be maintained under state or federal law for a specified amount of time.

a. Retention. The retention requirement for e-mail records must follow suit with records with similar content found in other media (i.e., paper, film, electronic image). In the event that the content of the message does not fit into an existing record series on an approved retention schedule, the e-mail should be maintained in a manner consistent with R.S. 44:36 and should be added to the agency's approved retention schedule if the series is expected to remain active.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### §1327. Maintenance of Electronic Mail

A. Records created using an e-mail system may be saved for their approved retention period by one of the following.

1. Print message and file in appropriate hard copy file.
2. Place in folders and save on personal network drive or C: drive.
3. Save to removable disk (including CD-ROM). 3.5" disks are not recommended for retention periods of more than one year due to the instability of this medium.
4. Transfer to an automated records management software application.
5. Managed at the server by an automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### §1329. User Responsibilities

A. It is the responsibility of the user of the e-mail system, to manage e-mail messages according to their agency's retention schedule.

1. It is the responsibility of the sender of e-mail messages within the agency's e-mail system and recipients of messages from outside the agency to retain the messages for the approved retention period.

2. Names of sender, recipient, date/time of the message, as well as any attachments must be retained with the message. Except for listserv mailing services, distribution lists must be able to identify the sender and recipient of the message.

3. User responsibilities may be mitigated by the use of a server level automated classification system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### §1331. Agency Responsibilities

A. Each agency should adopt and disseminate to their employees an agency Electronic Mail (E-mail) Proper Use Policy. The policy should include:

1. defining official use and set limits on personal use of electronic messaging (similar to limitations that exist for telephone, fax, and personal mail);

2. prohibiting the use of electronic messaging system to promote the discrimination (on the basis of race, color, national origin, age, marital status, sex, political affiliation, religion, disability or sexual preference), promotion of sexual harassment, or to promote personal, political, or religious business or beliefs;

3. prohibiting employees from sending electronic messages under another employee's name without authorization;

4. prohibiting the altering of electronic messages, including any attachments;

5. agency process for storing and maintaining electronic messages for the duration of the message's retention period;

6. notice that users of an agency's electronic messaging system should not expect a right of privacy and that electronic messages may be monitored for compliance and abuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### §1333. Use of Records Management Application (RMA) Software

A. Agencies may use records management application (RMA) software to manage records in digital form. RMA software categorizes and locates records and identifies records that are due for disposition. RMA software also stores, retrieves, and disposes of the electronic records that are stored in its repository. Agencies should use RMA software that complies with DoD 5015.2-STD, "Design Criteria Standard for Electronic Records Management Software Applications," as issued by the U.S. Department of Defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

## Chapter 15. Microfilm Policy

### §1501. General

A. This policy applies to the microfilming of any agency record that is to be maintained solely in microfilm format and to all microfilm which is created or maintained for the full retention period of the record as a security copy of an

agency record. This policy does not apply to convenience film.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 44:405.

**HISTORICAL NOTE:** Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§1503. Definitions**

A. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections have the meanings defined in the R.S. 44:402.

**Aperture Card** Card with a rectangular opening(s) into which 16mm/35mm microfilm frames can be inserted, mounted, or pre-mounted.

**Batch** A quantity of chemicals or film which has been prepared at one time, and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

**CAD (Computer Assisted Design)** A method of creating microimages by computer-driven laser.

**Convenience Film** Microfilm copies of records created only for convenience of use and considered non records under R.S. 44:1.

**Declaration by the Camera Operator** A target photographed on film following the filmed records that provides identification of beginning and ending records on the film; signature of the camera operator; date the declaration was filmed; and reduction range, if more than one ratio has been used.

**Diazo** A photographic film containing one or more photosensitive layers composed of diazonium salts in a polymeric material which react with coupler(s) to form an azo dye image after film processing.

**Duplicate Microfilm** A microfilm copy made from the original or master negative. Can be silver, diazo or vesicular film.

**Essential Record** Any state record necessary to resume or continue a state agency's business; to recreate its legal and financial status; and to preserve the rights of the agency, its employees, and its clients.

**Microfilm** Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

**Microfilm Container** A generic term for any enclosure in close or direct contact with film such as a reel, can, bag, folder, sleeve (sheath), jacket, envelope, window mount or mat, slide mount, carton, cartridge, cassette, and aperture card.

**Microfilming** The methods, procedures, and processes used to produce microfilm.

**Original Microfilm** First generation of film produced when records are filmed.

**Silver Original** First generation silver-gelatin film or other archival quality film.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 44:405.

**HISTORICAL NOTE:** Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§1505. Access to Referenced Standards and Practices**

A. The copyrighted standards and recommended practices issued by the American National Standards Institute (ANSI) and/or the Association for Information and

Image Management (AIIM) listed in this chapter are considered best practice and each agency should strive to meet their minimum requirements for all microfilming of state records. A copy of each of the standards mentioned in this rule will be on file upon adoption of this rule and available for public inspection by appointment, during regular working hours at the Louisiana State Archives Building, 3851 Essen Lane, Baton Rouge, LA 70809. The standards are distributed by and available from the Association for Information and Image Management (AIIM), Suite 1100, 1100 Wayne Avenue, Silver Spring, MD 20910-5699.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 44:405.

**HISTORICAL NOTE:** Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§1507. Retention Schedule Compliance**

A. Microfilming of records must be in compliance with an approved agency retention schedule except, if an agency does not have an approved retention schedule, a microfilming needs assessment must be completed by the State Archives to determine if filming is justified.

1. For microfilm maintained as roll film, no more than one record series is permitted on each roll of microfilm.

2. Original records that have been microfilmed may be destroyed or source documents that have been filmed prior to the expiration of their retention periods if the microfilm complies with this policy and in accordance with R.S. 44:36 and R.S. 44:39.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 44:405.

**HISTORICAL NOTE:** Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§1509. Use of Original Microfilm**

A. After the completion of production tests and quality inspection, original microfilm must not be unwound and used for any purpose except:

1. to produce duplicate copies of the film;
2. to carry out periodic inspection of stored original film;
3. to expunge records required by law;
4. to destroy records when retention period has been met.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 44:405.

**HISTORICAL NOTE:** Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

### **§1511. Annual Report Requirement**

A. All state agency microfilm produced in house by a state agency or by an outside vendor shall make an annual report to the State Archives in the form of letter or report and shall include:

1. equipment used by agency or vendor;
2. record series annually filmed by agency;
3. total number of:
  - a. 100' 16 mm reels;
  - b. 215' 16 mm, reels;
  - c. 35 mm reels;
  - d. microfiche;
  - e. jackets;
  - f. aperture cards;
  - g. images filmed;
  - h. duplicate reels produced.

4. the method(s) and/or vendor used to process agency microfilm;

5. the location of the original film produced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1513. State Centralized Microfilm Unit**

A. In accordance with R.S. 44:415, all state agencies shall contract with the State Archives for microfilming services. If the State Archives is unable to meet the agency's needs, the State Archives can grant permission for the agency to contract with a private vendor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1515. Film Requirement**

A. Film with a polyester base must be used for records having a retention period of 10 years or more. Any film type may be used for records having a retention period of less than 10 years, provided the microfilmed record will last for the required retention period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1517. Film Production**

A. The records to be filmed must be arranged, identified, and indexed for filming so an individual document or series of documents can be located on the film. In instances where records are not self-indexing (i.e. not in a readily identifiable numeric or alphabetic sequence) an index must be maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1519. Image Marking**

A. Any use of image marking should comply with standard ANSI/AIIM MS8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1521. Targets**

A. Whenever possible, targets must all face the same direction as the records being microfilmed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1523. Image Sequence**

A. Image sequence on roll microfilm must be at a minimum:

1. leaders with a minimum of 3 feet (36 inches) of blank film;
2. density target and resolution target;
3. title page (including agency of record);
4. records series identification page;
5. records on film;
6. declaration by camera operator;
7. density target and resolution target;

8. trailer with a minimum of 3 feet (36 inches) of blank film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1525. Retake Sequence**

A. Filming sequence for retakes and additions on all microfilm must be:

1. title target identifying the retake or addition records;
2. the retake or addition records; and
3. declaration of the camera operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1527. Splices**

A. Retakes and additions can be spliced either before the density and resolution targets at the beginning of the film or after the density and resolution targets at the end of the film. Retakes and additions can be on another roll of film if cross-indexed to the original roll on the title target and the container label of the retake.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1529. Inspection**

A. Original processed microfilm must be visually inspected according to the following procedures.

1. A visual inspection of microfilm within two weeks of creation must be completed to verify legibility.
2. Film of essential records or records having a retention period of 10 years or more must be inspected image by image.
3. Film of non-essential records having a retention period of less than 10 years must be inspected at least every 10 feet of each roll or every third microfiche.

4. Images of documents must be uniformly placed on the film and must be free of any defects in the filming area that would interfere with the documents being read.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1531. Cameras and Ancillary Equipment**

A. It is recommended that camera equipment be calibrated, tested, or otherwise inspected and adjusted at least twice annually or more often if required to comply with manufacturer's specifications or recommended operating and maintenance procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1533. Storage of Original Microfilm**

A. Original film should be stored in a separate building from where duplicate copies or the original record are housed. In addition, films of different generic types, such as silver-gelatin, diazo, and vesicular films, should not be stored in the same storage room/vault or in rooms sharing common ventilation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§1535. Storage of Original Microfilm at State Archives**

A. Original film of original records at the State Archives must be placed in an Archives vault on a different floor than the original records or duplicate film. Films of different generic types, should not be stored in the same vault.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§1537. Storage Environment**

A. Original microfilm must be stored in a storage room or vault that:

1. offers protection from fire, water, steam, structural collapse, unauthorized access, and other potential hazards;
2. is equipped with a fire alarm and fire suppression system;
3. has adequate temperature and humidity controls:
  - a. for original film of records with a retention of 10 years or more, temperature must not exceed 72 degrees Fahrenheit, and a constant relative humidity of 45 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period;

- b. for original film of records with a retention period of 10 years or less, the maximum temperature must not exceed 77 degrees Fahrenheit, and a relative humidity range between 20 percent and 60 percent must be maintained with a maximum variation of plus/minus 5.0 percent relative humidity in a 24-hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§1539. Containers and Storage Housing**

A. Storage housing materials must be noncombustible and non-corrosive. Microfilm containers for original microfilm must:

1. be used for processed microfilm to protect the film and facilitate identification and handling.
2. be chemically stable materials such as non-corrodible metals (anodized aluminum or stainless steel), peroxide-free plastics, and acid-free paper to ensure no degradation is caused to the images.
3. stored in a closed housing or may be stored on open shelves or racks if the film is in closed containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§1341. Container Labels**

- A. Labels must include:
1. whether the film is original microfilm or a duplicate, including generation number if known;
  2. identification number;
  3. name of agency;
  4. records series title;
  5. inclusive dates of records;
  6. the beginning and ending records; and
  7. retakes/additions, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§1541. Inspection of Stored Original Microfilm**

A. Inspection of stored original microfilm may be conducted in accordance with the following standards:

1. ANSI IT9.11;
2. ANSI/AIIM MS45; and
3. ANSI/NAPM IT9.1.

B. When inspection is done, the sample of microfilm to be inspected for each storage room or vault, if more than one, must be 1/1000th of the total volume of stored microfilm or at least 100 microforms (rolls, jackets, microfiche, aperture cards, COM, etc.), whichever is greater. Sampling procedures must be established that will assure that all parts of the group of microfilm are represented.

C. Inspection must be conducted every five years. Microfilm that has been stored under temperature and/or humidity conditions other than those specified in this policy must be inspected every two years.

D. Containers used to store the film must be inspected for evidence of rust, corrosion, or other deterioration and replaced, if needed.

E. Original microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

F. If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

G. Any deteriorating film must immediately be removed from the storage area and the problem corrected before returning the film to storage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**§1543. Computer Output Microfilm (COM)**

A. All policies for COM are the same as other microfilm formats, except:

1. The COM original must be wet processed silver-gelatin film for essential records and records with a retention of 10 years or more.

2. The following standards for production, testing, and inspection of COM are recommended:

- a. ANSI/AIIM MS1;
- b. ANSI/AIIM MS5;
- c. ANSI/AIIM MS28;
- d. ANSI/AIIM MS39;
- e. ANSI/AIIM MS43; and
- f. ANSI/NAPM IT9.17.

B. If bar coding is used, the procedures in technical report AIIM TR12 should be followed.

C. The COM original must be visually inspected every 10 feet.

D. Eye-legible titling information must include the following:

1. name of agency;
2. records series title;
3. date(s) of records; and
4. starting and/or ending indexing information.

E. A reduction ratio not exceeding 48:1 must be used.

F. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1545. Jacketing**

A. All policies for jacketed microfilm are the same as other microfilm formats, except:

1. original microfilm may be placed in a jacket, if there is a security copy stored in the same fashion as original microfilm;

2. jacket header information should include a record identifier (name, number). If no security copy exists, the following must be included in the jacket header information:

- a. name of agency;
- b. records series title;
- c. date(s) of records; and
- d. starting and/or ending indexing information.

B. Header information must be created with a black carbon-type ribbon or ink that will not bleed, spread, or transfer.

C. Microfilm jackets should comply with ANSI/AIIM MS11.

D. The procedures in AIIM TR11 are recommended for the jacketing of film.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1547. Aperture Card/CAD Systems**

A. Film produced by aperture card/CAD systems are the same as other microfilm formats, except:

1. original microfilm and enclosure should pass the photographic activity test criteria outlined in the standard ANSI IT9.2;

2. a density test and a resolution test must be conducted on a sample of original microfilm at a minimum of once every 250 cards or every 1,000 images, whichever is greater;

3. aperture cards must have the following information on label headings:

- a. name of agency;
- b. records series title;
- c. date(s) of records; and
- d. unique identifier.

B. Adherence image sequence for filming, mentioned in this policy is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1549. Expungements**

A. Such action must comply with statutory law.

1. If roll film is spliced, the following information must be inserted in place of the expunged record(s):

- a. a start of expungement target;
- b. replacement documents for documents that were expunged (if necessary);
- c. an expungement certificate containing the following information:

d. the number of the district court ordering the expungement;

e. the signature, printed name, and title of the custodian of expunged records;

f. the date of expungement.

B. Images on film must not be expunged by punching holes through film, by using opaque, by blotting images with ink-type pen, or by using chemical means such as potassium dichromate (bleach) on film emulsion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1551. Destruction of Microfilmed Records**

A. Microfilmed records must be destroyed only in accordance with R.S. 44:411(A)(2). Microfilmed records scheduled for destruction must be disposed of in a manner that ensures protection for any sensitive or confidential information. Destruction of records on a roll of microfilm containing multiple record series must be done by destroying the whole roll of film at the time the records on the film that have the longest retention period are eligible for destruction or, if filmed prior to the effective date of these standards, by deleting the section of the film containing records eligible for destruction and splicing the film. If the film is spliced, a destruction notice containing the following information must be inserted in place of the deleted records:

1. the record series title and the inclusive dates of the records;

2. the signature and printed name of the agency records management officer (RMO) approving deletion of the records;

3. the date of the deletion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

#### **§1553. Documentation and Record Keeping**

A. Microfilm Production

1. Agency records management officer (RMO) must require documentation to be maintained that identifies titles of records filmed, dates records filmed, disposition of records after filming, dates film processed, disposition of film, reduction ratio used, records series contained on each microfilm, and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

B.1. The following information must be recorded for each inspection of stored microfilm:

a. the quantity and identification of microfilm inspected;

b. the condition of the microfilm, including description of any deterioration;

c. any corrective action required;

d. the date(s) of inspection and signed certification of inspector; and

e. the date any corrective action was completed.

2. The inspection log of stored microfilm must be maintained by year and within each year numerically according to microfilm identifier or number.

C. Agency microfilm programs must be reviewed yearly by the agency records management officer (RMO) for compliance with R.S. 44, Chapter 5, and this policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:405.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, Division of Archives, LR 29:

**Family Impact Statement**

These proposed Rules LAC 4:XVII (Chapters 1-15) 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. the behavior and personal responsibility of children;
5. the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons may submit written comments through April 10, 2003 to Carrie Fager, State Archives/Records Management, P.O. Box 94125, Baton Rouge, LA 70804-9125.

W. Fox McKeithen  
Secretary of State

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

**RULE TITLE: Records Management Policies and Practices**

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

The anticipated increase or decrease in costs to implement the proposed action cannot be accurately calculated since our office does not have figures on what each state and local agency spends currently on their records and information management program. However, it is likely that some expenses in professional services and equipment charges could be incurred for agencies that have not complied with the provisions of R.S. 44. Once compliant, the savings realized would likely offset any required expenditures.

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

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

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

There are no anticipated costs and/or economic benefits to directly affected persons.

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

There is no anticipated effect on competition and employment.

W. Fox McKeithen  
Secretary of State  
0303#077

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

2003-2004 Resident Game Hunting Seasons  
(LAC 76:XIX.101 and 103)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate Rules and regulations governing the hunting of resident game birds and game quadrupeds.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part XIX. Hunting and WMA Regulations**

**Chapter 1. Resident Game Hunting Season**

**§101. General**

A. The Resident Game Hunting Season, 2003-2004 regulations are hereby adopted by the Wildlife and Fisheries Commission. A complete copy of the *Regulation Pamphlet* may be obtained from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:

**§103. Resident Game Birds and Animals 2003-2004**

A. Shooting Hours. One-half hour before sunrise to one-half hour after sunset.

B. Consult *Regulation Pamphlet* for seasons or specific regulations on Wildlife Management Areas or specific localities.

Species	Season Dates	Daily Bag Limit	Possession Limit
Quail	Nov. 15-Feb. 29	10	20
Rabbit	Oct. 4-Feb. 29	8	16
Squirrel	Oct. 4-Feb. 8	8	16
Deer	See Schedule	1 antlered and 1 antlerless (when legal on private lands)	6/season

**C. Deer Hunting Schedule**

Area	Archery	Muzzleloader (All Either Sex)	Still Hunt (No Dogs Allowed)	With or Without Dogs
1	Oct. 1 - Jan. 31	Nov. 15-Nov. 21 Jan. 19-Jan. 25	Nov. 22-Dec.5 Jan. 5-Jan.18	Dec. 6- Jan. 4
2	Oct. 1 - Jan. 31	Oct. 25-Oct. 31 Jan. 10-Jan. 16	Nov. 1-Dec. 5	Dec. 6- Jan. 9
3	Sept.13- Jan.15	Oct. 4-Oct.10 Dec. 1-Dec. 5	Oct.11-Nov.30 Dec. 6-Dec.31	
4	Oct. 1 - Jan. 31	Nov. 8-Nov. 14 Jan. 10-Jan. 18	Nov.15-Jan. 9	
5	Oct. 1 - Jan. 31	Nov. 15-Nov. 21 Jan. 10-Jan. 18 Bucks Only	Nov.22- Nov.30	
6	Oct. 1 - Jan. 31	Nov. 15-Nov. 21 Jan. 19-Jan. 25	Nov.22-Dec. 5	Dec. 6- Jan. 18

7	Oct. 1- Jan. 31	Oct. 11-Oct. 17 Nov. 8-Nov. 14	Oct.18-Nov. 7 Nov.15- Nov.30	Dec. 1- Dec.31
8	Sept.13- Jan. 15	Oct. 4-Oct. 10 Dec. 1-Dec. 5	Oct.11-Nov.30	Dec. 6- Dec.31

D. Modern Firearm Schedule (Either Sex Seasons)

Parish	Modern Firearm Either-Sex Days
Acadia	Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 15-16, 22-30
Allen	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Ascension	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Assumption	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Avoyelles	Area 2: Nov. 1-2, 22-23, 28-30, Dec. 6-7
	Area 6: Nov. 22-23, 28-30, Dec. 6-7
Beauregard	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Bienville	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Bossier	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Caddo	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Calcasieu	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Caldwell	Nov. 1-2, 22-23, 28-30, Dec. 6-7
Cameron	Oct. 11-12, 18-19, 25-16, Nov. 1-2, 8-9, 15-16, 22-30
Catahoula	Area 1: Nov. 22-23, 26-30, Dec. 6-7
	Area 2: Nov. 1-2, 22-23, 28-30, Dec. 6-7
Claiborne	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Concordia	Nov. 22-23, 26-30, Dec. 6-7, 13-14, 20-21
DeSoto	Nov. 1-9, 15-16, 22-30, Dec. 6-7
East Baton Rouge	Nov. 22-23, 26-30, Dec. 6-7, 13-14
East Carroll	Nov. 15-16, 22-23, 28-30, Dec. 6-7, 13-14, 20-21, East of mainline Mississippi River Levee and south and east of La. 877 from West Carroll Parish line to La. 580, south of La. 580 to U.S. 65, west of U.S. 65 to Madison Parish line.
	Nov. 15-16, 28-30 the remainder of the parish.
East Feliciana	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Evangeline	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Franklin	Nov. 22-23, 26-30
Grant	Area 1: Nov. 22-23, 26-30, Dec. 6-7
	Area 2: Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
Iberia	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 7: Oct. 18-19, Nov. 15-16, 22-23, 28-30, Dec. 6-7
Iberville	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Jackson	Nov. 1-3, 8-9, 15-16, 22-30, Dec. 6-7
Jefferson	Nov. 22-23, 26-30, Dec. 6-7
Jefferson Davis	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7, 13-14
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Lafayette	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-23, 28-30
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Lafourche	Nov. 22-23, 26-30, Dec. 6-7, 13-14
LaSalle	Area 1: Nov. 22-23, 28-30, Dec. 6-7
	Area 2: Nov. 1-2, 22-23, 28-30, Dec. 6-7
Lincoln	Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
Livingston	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Madison	Nov. 22-23, 26-30, Dec. 6-7, 13-14, 20-21

Parish	Modern Firearm Either-Sex Days
Morehouse	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 4: Nov. 15-16, 28-30
Natchitoches	Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
Orleans	Closed to all deer hunting
Ouachita	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 4: Nov. 15-16, 28-30
Plaquemines	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Pointe Coupee	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Rapides	Area 1: Nov. 22-23, 26-30, Dec. 6-7
	Area 2: Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 28-30, Dec. 6-7
	Area 6: Nov. 22-23, 26-30, Dec. 6-7
Red River	Nov. 1-9, 15-16, 22-30, Dec. 6-7
Richland	Nov. 15-16, 28-30
Sabine	Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7
St. Bernard	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Charles	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Helena	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. James	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. John	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Landry	Area 3: Oct. 11-12, Nov. 28-30, Dec. 6-7
	Area 6: Nov. 22-23, 28-30, Dec. 6-7
St. Martin	Nov. 22-23, 26-30, Dec. 6-7, 13-14
St. Mary	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 7: Oct. 18-19, Nov. 15-16, 22-23, 28-30, Dec. 6-7
St. Tammany	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Tangipahoa	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Tensas	Nov. 22-23, 26-30, Dec. 6-7, 13-14, 20-22
Terrebonne	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 7: Oct. 18-19, Nov. 15-16, 22-23, 28-30, Dec. 6-7
Union	Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
Vermilion	Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 15-16, 22-30
Vernon	Area 2: Nov. 1-2, 8-9, 15-16, 22-30, Dec. 6-7
	Area 3: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
	Area 8: Oct. 11-12, 18-19, 25-26, Nov. 1-2, 8-9, 22-30, Dec. 6-7
Washington	Nov. 22-23, 26-30, Dec. 6-7, 13-14
Webster	Nov. 1-9, 15-16, 22-30, Dec. 6-7
West Baton Rouge	Nov. 22-23, 26-30, Dec. 6-7, 13-14
West Carroll	Closed
West Feliciana	Area 1: Nov. 22-23, 26-30, Dec. 6-7, 13-14
	Area 6: Nov. 22-23, 26-30, Dec. 6-7, 13-14
Winn	Nov. 1-2, 8-9, 15-16, 22-23, 28-30, Dec. 6-7

E. Farm Raised White-tailed Deer on Supplemented Shooting Preserves

Archery	Modern Firearm	Either Sex
Oct. 1-Jan. 31 (Either Sex)	Nov. 1-Jan. 31	Nov. 1-7 Dec. 1-7 Jan. 1-7

F. Exotics on Supplemented Shooting Preserves: Either Sex, no closed season.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), IR 25:1290 (July 1999), repromulgated LR 25:1526 (August 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:

### Family Impact Statement

This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972.B.

Public hearings will be held at the following locations: Region 1C March 11, 7:00 p.m., Minden Civic Center, Minden, Louisiana; Region 2C March 19, 7 p.m., Ruston Civic Center, Ruston, Louisiana; Region 3C March 11, 7 p.m., Alexandria City Hall Convention Center, Alexandria, Louisiana; Region 4C March 12, 7 p.m., Concordia Parish Community Center, Ferriday, Louisiana; Region 5C March 13, 6 p.m., Burton Coliseum, Chalkley Room, Lake Charles, Louisiana; Region 6C March 19, 7 p.m., National Marine Fisheries Building, Suite 119, Lafayette, Louisiana; Region 7C March 10, 7 p.m., Pontchatoula High School auditorium, Pontchatoula, Louisiana. Also comments will be accepted at regularly scheduled Wildlife and Fisheries Commission Meetings from April through July. Interested persons may submit written comments relative to the proposed Rule until Wednesday, May 7, 2003 to Mr. Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Terry D. Denmon  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: 2003-2004 Resident Game Hunting Seasons

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

Establishment of hunting regulations is an annual process. The cost of implementing the proposed Rules, aside from staff time, is the production of the regulations pamphlet. Cost of printing this 2002-2003 state hunting pamphlet was \$124,163 and no major increase in expenditures is anticipated. Local government units will not be impacted.

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

State hunting license fee collections are between 9.0-10.0 million dollars annually. Additionally, hunting and related activities generate approximately \$25.3 million in state sales tax, \$5.1 million in state income tax and \$23 million in local sales tax revenues annually (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting season being established and a potential loss of some of these revenues.

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

Over 300,000 hunters and numerous businesses that provide goods and services to hunters are directly affected by this proposal. Hunting in Louisiana generates in excess of \$581,000,000 annually in retail sales of outdoor related equipment, associated items and trip related expenditures (IAFWA; Southwick Associates, 2002). Failure to adopt Rule

changes would result in no hunting seasons being established and a potential loss of commerce revenues associated with these activities.

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

Hunting in Louisiana provides 9,184 jobs (IAFWA; Southwick Associates, 2002). Not establishing hunting seasons may have a negative and direct impact on these jobs.

James L. Patton  
Undersecretary  
0303#092

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### General and Wildlife Management Area (WMA) Hunting (LAC 76:XIX.111)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate Rules and regulations governing the hunting of resident game birds and game quadrupeds.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part XIX. Hunting and WMA Regulations

#### Chapter 1. Resident Game Hunting Season

#### §111. General and Wildlife Management Area Hunting Rules and Regulations

#### A. Hunting Seasons and Wildlife Management Area Regulations

1. The Rules and regulations contained within this digest have been officially approved and adopted by the Wildlife and Fisheries Commission under authority vested by Sections 115 and 116 of Title 56 of the Louisiana Revised Statutes of 1950 and are in full force and effect in conjunction with all applicable statutory laws. The secretary of the Department of Wildlife and Fisheries has the authority to close or alter seasons in emergency situations in order to protect fish and wildlife resources.

2. Pursuant to Section 40.1 of Title 56 of the Louisiana Revised Statutes of 1950, the Wildlife and Fisheries Commission has adopted monetary values which are assigned to all illegally taken, possessed, injured or destroyed fish, wild birds, wild quadrupeds and other wildlife and aquatic life. Anyone taking, possessing, injuring or destroying fish, wild birds, wild quadrupeds and other wildlife and aquatic life shall be required to reimburse the Department of Wildlife and Fisheries a sum of money equal to the value of the wildlife illegally taken, possessed, injured or destroyed. This monetary reimbursement shall be in addition to any and all criminal penalties imposed for the illegal act.

#### B. Resident Game Birds and Animals

1. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

#### C. Other Season Dates

1. Turkey. Please refer to separate pamphlet.

2. Raccoon and Opossum. No closed season. Raccoon and opossum can be taken at night by one or more licensed hunters with one or more dogs and one .22 rimfire firearm. A licensed hunter may take raccoon or opossum with .22



rimfire rifle, .36 caliber or smaller muzzleloader rifle or shotgun during daylight hours during the open rabbit season. Hunting from boats or motor vehicles is prohibited. No bag limit for nighttime or daytime raccoon or opossum hunting during the open trapping season except on certain WMAs as listed. The remainder of the year, the raccoon and opossum bag limit for daytime or nighttime is one per person per day or night. No one who hunts raccoons or opossums as prescribed above shall pelt during the closed trapping season nor sell skins or carcasses of raccoons and opossums taken during the open trapping season unless he is the holder of a valid trapping license which shall be required in addition to his basic hunting license. Pelting or selling carcasses is illegal during closed trapping season.

3. Nutria. On WMAs and private property nutria may be taken recreationally from September 1 through February 29 during legal shooting hours by any legal hunting method with no limit except if taken with a shotgun, steel shot must be used. On WMAs during waterfowl seasons, nutria may be taken only with the use of shotguns with shot no larger than BB lead or F steel, and during gun deer seasons, anyone taking nutria must display 400 square inches of "hunter orange" and wear a "hunter orange" cap or hat. Pelting or selling of carcasses is illegal except when taken by a licensed trapper during the trapping season. Trespass upon private property without consent for the purpose of taking nutria is punishable by fines and possible jail time (R.S. 56:265).

4. Blackbirds and Crows. The season for crows shall be September 1 through January 2 with no limit; however crows, blackbirds, cowbirds and grackles may be taken year round during legal shooting hours if they are depredating or about to depredate upon ornamentals or shade trees, agricultural crops, livestock, wildlife, or when concentrated in such numbers as to cause a health hazard. Louisiana has determined that the birds listed above are crop depredators and that crows have been implicated in the spread of the West Nile virus in humans.

5. Pheasant. Closed.

6. Falconry. Special permit required. Resident and migratory game species except turkeys may be taken. Seasons and bag limits are the same as for statewide and WMA regulations except squirrels may be taken by licensed falconers until the last day of February. Refer to LAC 76:V.301 for specific Falconry Rules.

7. Licensed Hunting Preserve. October 1-April 30. Pen-raised birds only. No limit entire season. Refer to LA C 76:V.305 for specific Hunting Preserve Rules.

8. Deer Management Assistance Program (DMAP). Land enrolled in the voluntary program will be assessed a \$25 registration fee and \$0.05/acre fee. Deer management assistance tags must be in the possession of the hunter and attached and locked to antlerless deer (including those taken on either-sex days and those taken with bow or muzzleloader) through the hock in a manner that it cannot be removed before the deer is moved from the site of the kill. Failure to do so is a violation of R.S. 56:115. Failing to follow DMAP Rules and regulations may result in suspension and cancellation of the program on those lands involved. Refer to LAC 76:V.111 for specific DMAP Rules.

9. Farm Raised White-Tailed Deer and Exotics on Licensed Supplemented Shooting Preserves

a. Definitions

*Exotics* for purposes of this Rule means any animal of the family Bovidae (except the Tribe Bovini [cattle]) or Cervidae which is not indigenous to Louisiana and which is confined on a Supplemented Hunting Preserve. *Exotics* shall include, but are not limited to, fallow deer, red deer, elk, sika deer, axis deer, and black buck antelope.

*Hunting* in its different tenses and for purposes of this Rule means to take or attempt to take, in accordance with R.S. 56:8.

*Same as Outside* for purposes of this Rule means hunting on a Supplemented Hunting Preserve must conform to applicable statutes and Rules governing hunting and deer hunting, as provided for in Title 56 of the Louisiana Revised Statutes and as established annually by the Wildlife and Fisheries Commission (LWFC).

*Supplemented Hunting Preserve* for purposes of this Rule means any enclosure for which a current Farm-Raising License has been issued by the Department of Agriculture and Forestry (LDAF) with concurrence of the Department of Wildlife and Fisheries (LDWF) and is authorized in writing by the LDAF and LDWF to permit hunting.

*White-Tailed Deer* for purposes of this Rule means any animal of the species *Odocoileus virginianus* which is confined on a Supplemented Hunting Preserve.

b. Seasons

i. Farm-Raised White-Tailed Deer: Consult the regulations pamphlet.

ii. Exotics: year round.

c. Methods of Take

i. White-Tailed Deer: Same as outside.

ii. Exotics: Exotics may be taken with longbow (including compound bow) and arrow; shotguns not larger than 10 gauge, loaded with buckshot or rifled slug; handguns and rifles no smaller than .22 caliber centerfire; or muzzleloading rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, using black powder or an approved substitute only, and using ball or bullet projectile, including sabot bullets only.

d. Shooting Hours

i. White-Tailed Deer: Same as outside.

ii. Exotics: one-half hour before sunrise to one-half hour after sunset.

e. Bag Limit

i. Farm-Raised White-Tailed Deer: Same as outside.

ii. Exotics: No limit.

f. Hunting Licenses

i. White-Tailed Deer: Same as outside.

ii. Exotics: No person shall hunt any exotic without possessing a valid basic and big game hunting license.

g. Tagging. White-Tailed Deer and Exotics: Each animal shall be tagged in the left ear or left antler immediately upon being killed and before being moved from the site of the kill with a tag provided by the LDAF. The tag shall remain with the carcass at all times.

D. Hunting General Provisions

1. A basic resident or non-resident hunting license is required of all persons to hunt, take, possess or cause to be

transported by any other person any wild bird or quadruped. See information below for exceptions.

2. All persons born on or after September 1, 1969 must show proof of satisfactorily completing a Hunter Safety course approved by LDWF to purchase a Basic Hunting License, except any active or veteran member of the United States armed services or any POST-certified law enforcement officer. Application for the exemption shall be filed in person at the Department of Wildlife and Fisheries main office building in the city of Baton Rouge. A person younger than 16 years of age may hunt without such certificate if he is accompanied by, and is under the direct supervision of a person 18 years of age or older, except during a statewide youth deer hunt, the youth must have satisfactorily completed a Hunter Safety course approved by LDWF to participate.

3. A big game license is required in addition to the basic hunting license to hunt, take, possess or cause to be transported any deer or turkey. A separate wild turkey stamp is required in addition to the basic hunting license and the big game license to hunt, take, possess or cause to be transported any turkey.

4. Taking game quadrupeds or birds from aircraft or participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

5. Methods of Taking Resident Game Birds and Quadrupeds

a. Use of a longbow (including compound bow) and arrow or a shotgun not larger than a 10 gauge fired from the shoulder without a rest shall be legal for taking all resident game birds and quadrupeds. Also, the use of a handgun, rifle and falconry (special permit required) shall be legal for taking all game species except turkey. It shall be illegal to hunt or take squirrels or rabbits at any time with a breech-loaded rifle or handgun larger than a .22 caliber rimfire or a muzzleloader rifle larger than .36 caliber. During closed deer gun season, it shall be illegal to possess shotgun shells loaded with slugs or shot larger than BB lead or F steel shot while small game hunting.

b. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs is prohibited when or where a still hunting season or area is designated, and will be strictly enforced. Shotguns larger than 10 gauge or capable of holding more than three shells shall be prohibited. Plugs used in shotguns must be incapable of being removed without disassembly. Refer to game schedules contained within these regulations for specific restrictions on the use of firearms and other devices.

6. Nuisance Animals. Landowners or their designees may remove beaver and nutria causing damage to their property without a special permit. Water set traps and firearms may be used to remove beaver; nutria may be removed by any means except that nutria cannot be taken by the use of headlight and gun between the hours of sunset and sunrise. With a special permit issued by the department, beavers may be taken between one-half hour after official sunset to one-half hour before official sunrise for a period of three consecutive calendar evenings from the effective date of the permit. For specific details contact a regional office near you. Any nuisance beaver or nutria trapped or shot

outside open trapping season cannot be pelted or sold. A trapping license is required to sell or pelt nuisance beavers or nutria taken during open trapping season. Squirrels found destroying commercial crops of pecans may be taken year-round by permit issued by the department. This permit shall be valid for 30 days from the date of issuance. Contact the local regional office for details.

7. Threatened and endangered species C Louisiana black bear, Louisiana pearl shell (mussel), sea turtles, gopher tortoise, ringed sawback turtle, brown pelican, bald eagle, peregrine falcon, whooping crane, Eskimo curlew, piping plover, interior least tern, ivory-billed woodpecker, red-cockaded woodpecker, Bachman's warbler, West Indian manatee, Florida panther, pallid sturgeon, Gulf sturgeon, Attwater's greater prairie chicken, whales and red wolf. Taking or harassment of any of these species is a violation of state and federal laws.

8. Unregulated Quadrupeds. Holders of a legal hunting license may take coyotes, unmarked hogs where legal, and armadillos year round during legal daylight shooting hours. The running of coyotes with dogs is prohibited in all turkey hunting areas during the open turkey season. Coyote hunting is restricted to "chase only" during still hunting segments of the firearm and archery only season for deer. Foxes and bobcats are protected quadrupeds and may be taken only with traps by licensed trappers during the trapping season. Remainder of the year "chase only" allowed by licensed hunters.

9. Hunting and/or Discharging Firearms on Public Roads. Hunting, standing, loitering or shooting game quadrupeds or game birds with a gun during open season while on a public highway or public road right-of-way is prohibited. Hunting or the discharge of firearms on roads or highways located on public levees or within 100 feet from the centerline of such levee roads or highways is prohibited. Spot lighting or shining from public roads is prohibited by state law. Hunting from all public roads and rights-of-way is prohibited and these provisions will be strictly enforced.

10. Tags. Any part of the deer or wild turkey divided shall have affixed thereto the name, date, address and big game license number of the person killing the deer or wild turkey and the sex of that animal. This information shall be legibly written in pen or pencil, on any piece of paper or cardboard or any material, which is attached or secured to or enclosing the part or parts. On lands enrolled in DMAP, deer management assistance tags must be attached and locked through the hock of antlerless deer, (including those taken with bow, muzzleloader and those antlerless deer taken on either-sex days) in a manner that it cannot be removed, before the deer is moved from the site of the kill.

11. Sex Identification. Positive evidence of sex identification, including the head, shall remain on any deer taken or killed within the State of Louisiana, or on all turkeys taken or killed during any special gobbler season when killing of turkey hens is prohibited, so long as such deer or turkey is kept in camp or field, or is in route to the domicile of its possessor, or until such deer or turkey has been stored at the domicile of its possessor or divided at a cold storage facility and has become identifiable as food rather than as wild game.

E. General Deer Hunting Regulations

1. One antlered and one antlerless (when legal on private lands) deer per day except on Wildlife Management Areas, Federal Refuges and National Forest Lands where the daily limit shall be one deer per day. Six per season (all segments included) by all methods of take.

2. A legal buck is a deer with visible antler of hardened bony material, broken naturally through the skin. Killing bucks without at least one visible antler as described above and killing does is prohibited except where specifically allowed and except in West Baton Rouge and Pointe Coupee Parishes and that portion of Iberville Parish west of the Mississippi River (excluding the Sherburne Wildlife Management Complex and those private lands which are totally surrounded by the Sherburne Complex) where a legal buck shall be defined as a deer with at least six points or a deer with both spikes 3 inches long or less. To be counted as a point, a projection must be at least 1 inch long and its length must exceed the length of its base. The beam tip is counted as a point but not measured as a point.

3. Deer hunting restricted to legal bucks only, except where otherwise allowed.

4. Either-sex deer is defined as male or female deer. Taking or possessing spotted fawns is prohibited.

5. It is illegal to hunt or shoot deer with firearms smaller than .22 caliber centerfire or a shotgun loaded with anything other than buckshot or rifled slug. Handguns may be used for hunting.

6. Taking game quadrupeds or birds from aircraft, participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

7. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs or moving vehicles, including ATVs, when or where a still hunting season or area is designated, is prohibited and will be strictly enforced. The training of deer dogs is prohibited in all still hunting areas during the gun still hunting and archery only season. Deer hunting with dogs is allowed in all other areas having open deer seasons that are not specifically designated as still hunting only. Except in wildlife management areas, a leashed dog may be used to trail and retrieve wounded or unrecovered deer during legal hunting hours. Any dog used to trail or retrieve wounded or unrecovered deer shall have on a collar with owner's name, address, and phone number. In addition, a dog may be used to trail and retrieve unrecovered deer after legal hunting hours; however, no person accompanying a dog after legal hunting hours may carry a firearm of any sort.

8. Areas not specifically designated as open are closed.

9. Muzzleloader Segment: (Special license and muzzleloader firearms specifications apply only to the special state, WMA, National Forest and Preserves, and Federal Refuge seasons.) Still hunt only. Specific WMAs will also be open, check WMA schedule for specific details. Muzzleloader license required for resident hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Either-sex deer may be taken in all deer hunting areas except Area 5 and as specified on Public Areas. It is unlawful to carry a gun, other than a muzzleloader, including those powered by air or other means, while hunting during the special muzzleloader

segment. Except, it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot only).

a. Legal Muzzleloader Firearms for Special Season: Rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, use black powder or approved substitute only, take ball or bullet projectile only, including sabot bullets and may be fitted with magnified scopes. This includes muzzleloaders known as "inline" muzzleloaders.

10. Archery Segment: Consult regulations pamphlet. WMA seasons are the same as outside except as noted below. Archery license required for resident bow hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Residents 60 years of age and older may use a crossbow without a special permit or license. Either-sex deer may be taken in all areas open for deer hunting except when a bucks only season is in progress for gun hunting, archer's must conform to the bucks only regulations. Either-sex deer may be taken on WMAs at anytime during archery season except when bucks only seasons are in progress on the respective WMA. Also, archery season restricted on Atchafalaya Delta, Salvador, Lake Boeuf, and Pointe-aux-Chenes WMAs (see schedule).

a. Bow and arrow regulations: Hunting arrows for deer must have well-sharpened metal broadhead blades not less than 7/8 inch in width. Bow and arrow fishermen must have a sport fishing license and not carry any arrows with broadhead points unless a big game season is in progress.

i. It is unlawful:

(a). to carry a gun, including those powered by air or other means, while hunting with bow and arrow during the special bow and arrow deer season except it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot) only;

(b). to have in possession or use any poisoned or drugged arrow, arrows with explosive tips, or any bow drawn, held or released by mechanical means except that hand held releases are lawful;

(c). to hunt deer with a bow having a pull less than 30 pounds;

(d). to hunt with a bow or crossbow fitted with an infrared or laser sight.

11. Hunter Orange. Any person hunting deer shall display on his head, chest and/or back a total of not less than 400 square inches of "hunter orange" during the open deer gun season including muzzleloader season. Persons hunting on privately owned, legally posted land may wear a hunter orange cap or hat in lieu of the 400 square inches. These provisions shall not apply to persons hunting deer from elevated stands on property that is privately owned and legally posted or to archery deer hunters hunting on legally posted lands where firearm hunting is not allowed by agreement of the landowner or lessee. However, anyone hunting deer on such lands where hunting with firearms is allowed shall be required to display the 400 square inches or a hunter orange cap or hat while walking to and from elevated stands. While a person is hunting from an elevated stand, the 400 square inches or cap or hat may be concealed. Warning: deer hunters are cautioned to watch for persons hunting other game or engaged in activities not requiring "hunter orange."

12. Special Handicapped Either-Sex Deer Season on Private Land. See regulations pamphlet for dates. Restricted to individuals with Physically Challenged Hunter Permit.

13. Special Youth Deer Hunt on Private Lands (Either-Sex). See regulations pamphlet for dates. Youth must be under the age of 16, must have proof of successfully completing a Department approved hunter safety course, and must be accompanied by an adult licensed to hunt big game. In West Baton Rouge and Pointe Coupee Parishes and that portion of Iberville Parish west of the Mississippi River antler restrictions for bucks shall be waived.

F. Description of Areas

1. Area 1

a. All of the following parishes are open: East Feliciana, St. Helena, Concordia, Franklin, Tensas, East Baton Rouge, Madison, Washington.

b. Portions of the following parishes are also open:

i. CatahoulaCAll except that portion lying west of Boeuf River from Caldwell parish line to Ouachita River, north and east of Ouachita River to La. 559 at Duty Ferry, west of La. 559 to La. 124. North and west of La. 124 westward to LaSalle parish line.

ii. GrantCEast of U.S. 165 and south of La. 8.

iii. LaSalleCPortion south of La. 8 from Little River eastward to La. 127 in Jena, east of La. 127 from Jena northward to U.S. 165, east of U.S. 165 from La. 127 northward to La. 124. South of La. 124 eastward to Catahoula Parish line.

iv. LivingstonCNorth of I-12.

v. RapidesCEast of U.S. 165 and north of Red River.

vi. St. TammanyCAll except that portion south of I-12, west of Hwy. 1077 to La. 22, south of La. 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain.

vii. TangipahoaCNorth of I-12.

viii. West FelicianaCAll except that portion known as Raccourci and Turnbull Island.

c. Still hunting only in all or portions of the following parishes:

i. CatahoulaCSouth of Deer Creek to Boeuf River, east of Boeuf and Ouachita Rivers to La. 8 at Harrisonburg, west of La. 8 to La. 913, west of La. 913 and La. 15 to Deer Creek.

ii. East Feliciana and East Baton RougeCEast of Thompson Creek from the Mississippi state line to La. 10. North of La. 10 from Thompson Creek to La. 67 at Clinton, west of La. 67 from Clinton to Mississippi state line. South of Mississippi state line from La. 67 to Thompson Creek. Also that portion of East Baton Rouge Parish east of La. 67 from La. 64 north to Parish Line, south of Parish Line from La. 64 eastward to Amite River. West of Amite River southward to La. 64, north of La. 64 to La. 37 at Magnolia, east of La. 37 northward to La. 64 at Indian Mound, north of La. 64 from Indian Mound to La. 67. Also, that portion of East Feliciana Parish east of La. 67 from parish line north to La. 959, south of La. 959 east to La. 63, west of La. 63 to Amite River, west of Amite River, southward to parish line, north of parish line westward to La. 67.

iii. FranklinCAll

iv. St. HelenaCNorth of La. 16 from Tickfaw River at Montpelier westward to La. 449, east and south of

La. 449 from La. 16 at Pine Grove northward to La. 1045, south of La. 1045 from its junction with La. 449 eastward to the Tickfaw River, west of the Tickfaw River from La. 1045 southward to La. 16 at Montpelier.

v. TangipahoaCThat portion of Tangipahoa Parish north of La. 10 from the Tchefuncte River to La. 1061 at Wilmer, east of La. 1061 to La. 440 at Bolivar, south of La. 440 to the Tchefuncte River, west of the Tchefuncte River from La. 440 southward to La. 10.

vi. Washington and St. TammanyCEast of La. 21 from the Mississippi state line southward to the Bogue Chitto River, north of the Bogue Chitto River from La. 21 eastward to the Pearl River Navigation Canal, east of the Pearl River Navigation Canal southward to the West Pearl River, north of the West Pearl River from the Pearl River Navigation Canal to Holmes Bayou, west of Holmes Bayou from the West Pearl River northward to the Pearl River, west of the Pearl River from Holmes Bayou northward to the Mississippi state line, south of the Mississippi state line from the Pearl River westward to La. 21. Also, that portion of Washington Parish west of La. 25 from the Mississippi state line southward to the Bogue Chitto River, then west of the Bogue Chitto River to its junction with the St. Tammany Parish line, north of the St. Tammany Parish line to the Tangipahoa Parish line, east of the Tangipahoa Parish line to the Mississippi state line, south of the Mississippi state line to its junction with La. 25.

vii. West FelicianaCWest of Thompson Creek to Illinois-Central Railroad, north of Illinois-Central Railroad to Parish Road #7, east of Parish Road #7 to the junction of U.S. 61 and La. 966, east of La. 966 from U.S. 61 to Chaney Creek, south of Chaney Creek to Thompson Creek.

2. Area 2

a. All of the following parishes are open:

i. Bienville, Jackson, Union, Bossier, Lincoln, Webster, Caddo, Natchitoches, Winn, Claiborne, Red River, DeSoto, Sabine, Caldwell.

ii. except: Kisatchie National Forest which has special regulations. Caney, Corney, Middlefork tracts of Kisatchie have the same regulations as Area 2, except still hunting only for deer and except National Forest Land within the Evangeline Unit, Calcasieu Ranger District described in Area 2 description shall be still hunting only.

b. Portions of the following parishes are also open:

i. AllenCNorth of U.S. 190 from the parish line westward to Kinder, east of U.S. 165 from Kinder northward to La. 10 at Oakdale, north of La. 10 from Oakdale, westward to the parish line;

ii. AvoyellesCThat portion west of I-49.

iii. CatahoulaCThat portion lying west of Boeuf River from Caldwell parish line to Ouachita River, north and east of Ouachita River to La. 559 at Duty Ferry. West of La. 559 to La. 124. North and west of La. 124 westward to LaSalle parish line.

iv. EvangelineCAll except the following portions: east of I-49 to junction of La. 29, east of La. 29 south of I-49 to Ville Platte, and north of U.S. 167 east of Ville Platte.

v. GrantCAll except that portion south of La. 8 and east of U.S. 165.

vi. Jefferson Davis CNorth of U.S. 190.

vii. LaSalleCAll except south of La. 8 from Little River eastward to La. 127 in Jena, east of La. 127 from Jena northward to U.S. 165, east of U.S. 165 from La. 127 northward to La. 124. South of La. 124 eastward to Catahoula parish line.

viii. MorehouseCWest of U.S. 165 (from Arkansas state line) to Bonita, north and west of La. 140 to junction of La. 830-4 (Cooper Lake Road), west of La. 830-4 to Bastrop, west of La. 139 to junction of La. 593, west and south of La. 593 to Collinston, west of La. 138 to junction of La. 134 and north of La. 134 to Ouachita line at Wham Brake.

ix. OuachitaCAll except south of U.S. 80 and east of Ouachita River, east of La. 139 from Sicard to junction of La. 134, south of La. 134 to Morehouse line at Wham Brake.

x. RapidesCAll except north of Red River and east of U.S. 165. South of La. 465 to junction of La. 121, west of La. 121 and La. 112 to Union Hill, and north of La. 113 from Union Hill to Vernon Parish line, and that portion south of Alexandria between Red River and U.S. 167 to junction of U.S. 167 with I-49 at Turkey Creek exit, east of I-49 southward to parish line.

xi. VernonCNorth of La. 10 from the parish line westward to La. 113, south of La. 113 eastward to the parish line. Also the portion north of La. 465, west of La. 117 from Kurthwood to Leesville, and north of La. 8 from Leesville to Texas state line.

c. Still hunting only in all or portions of the following parishes:

i. Claiborne and WebsterCCaney, Corney and Middlefork tracts of Kisatchie National Forest. (See Kisatchie National Forest Regulations);

ii. OuachitaCEast of Ouachita River;

iii. RapidesCWest of U.S. 167 from Alexandria southward to I-49 at Turkey Creek Exit, west of I-49 southward to Parish Line, north of Parish Line westward to U.S. 165, east of U.S. 165 northward to U.S. 167 at Alexandria. North of La. 465 from Vernon Parish line to La. 121, west of La. 121 to I-49, west of I-49 to La. 8, south and east of La. 8 to La. 118 (Mora Road), south and west of La. 118 to Natchitoches Parish line;

iv. VernonCEast of Mora-Hutton Road from Natchitoches Parish line to Hillman Loop Road, south and east of Hillman Loop Road to Comrade Road, south of Comrade Road to La. 465, east and north of La. 465 to Rapides Parish line.

### 3. Area 3

a. All of Acadia, Cameron and Vermilion Parishes are open.

b. Portions of the following parishes are also open:

i. AllenCSouth of U.S. 190 and west of La. 113;

ii. BeauregardCWest of La. 113. Also east of La. 27 from the parish line north to DeRidder and north of U.S. 190 westward from DeRidder to Texas line;

iii. CalcasieuCSouth of U.S. 90. Also east of La. 27 from Sulphur northward to the parish line;

iv. IberiaCWest of U.S. 90 and north of La. 14;

v. Jefferson Davis CAll except north of U.S. 190;

vi. LafayetteCWest of I-49 and U.S. 90;

vii. RapidesCSouth of La. 465 to junction of La. 121, west of La. 121 and La. 112 to Union Hill and north of La. 113 from Union Hill to Vernon Parish line;

viii. St. LandryCWest of U.S. 167;

ix. VernonCWest and north of La. 113, south of La. 465, east of La. 117 from Kurthwood to Leesville, and south of La. 8 from Leesville to Texas state line.

### 4. Area 4

a. All of East Carroll and Richland parishes are open.

b. Portions of the following parishes are open:

i. MorehouseCEast of U.S. 165 (from Arkansas state line) to Bonita, south and east of La. 140 to junction of La. 830-4 (Cooper Lake Road), east of La. 830-4 to Bastrop, east of La. 139 at Bastrop to junction of La. 593, east and north of La. 593 to Collinston, east of La. 138 to junction of La. 134 and south of La. 134 to Ouachita line at Wham Brake.

ii. OuachitaCSouth of U.S. 80 and east of Ouachita River, east of La. 139 from Sicard to junction of La. 134, south of La. 134 to Morehouse line at Wham Bake.

### 5. Area 5

a. All of West Carroll Parish is open.

i. All deer hunting with firearms is for bucks only including muzzleloader season.

### 6. Area 6

a. All of Orleans Parish is closed to all forms of deer hunting.

b. All of the following parishes are open: Ascension, Plaquemines, St. John, Assumption, Pointe Coupee, St. Martin, Iberville, St. Bernard, Jefferson, St. Charles, Lafourche, St. James, West Baton Rouge.

c. Portions of the following parishes are also open:

i. AvoyellesCAll except that portion west of I-49;

ii. EvangelineCthat portion east of I-49 to junction of La. 29, east of La. 29 south of I-49 to Ville Platte and north of U.S. 167 east of Ville Platte;

iii. IberiaCEast of U.S. 90;

iv. LafayetteCEast of I-49 and U.S. 90;

v. LivingstonCSouth of I-12;

vi. RapidesCSouth of Alexandria between Red River and U.S. 167 to the junction of U.S. 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line;

vii. St. LandryCEast of U.S. 167;

viii. St. MaryCnorth of U.S. 90;

ix. St. TammanyCthat portion south of I-12, west of Hwy. 1077 to La. 22, south of La. 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain;

x. TangipahoaCSouth of I-12;

xi. TerrebonneCnorth of La. 182 from Assumption Parish line eastward to Houma, east of Houma Navigation Canal southward to the Gulf of Mexico;

xii. West FelicianaCwest of Mississippi River, known as Raccourci and Turnbull Islands;

d. Still hunting only in all or portions of the following parishes:

i. AvoyellesCnorth of La. 1 from Simmesport westward to La. 115 at Marksville, east of La. 115 from Marksville northward to the Red River near Moncla, south and west of the Red River to La. 1 at Simmesport;

ii. PlaqueminesCEast of the Mississippi River;

iii. RapidesCSouth of Alexandria between Red River and U.S. 167 to the junction of U.S. 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line;

iv. St. Bernard Call the parish shall be still hunting only except that portion of St. Bernard known as the spoil area between the MRGO on the east and Access Canal on the west, south of Bayou Bienvenue and north of Bayou la Loutre;

v. St. John South of Pass Manchac from Lake Pontchartrain to U.S. 51, east of U.S. 51 from Pass Manchac to La. 638 (Frenier Beach Road). North of La. 638 from U.S. 51 to Lake Pontchartrain. West of Lake Pontchartrain from La. 638 to Pass Manchac.

vi. St. Landry Those lands surrounding Thistlethwaite WMA bounded north and east by La. 359, west by La. 10, and south by La. 103.

#### 7. Area 7

a. Portions of the following parishes are open:

i. Iberia and St. Mary Parishes South of La. 14 and west U.S. Hwy. 90.

ii. Terrebonne South of La. 182 from Assumption Parish line eastward to Houma, west of Houma Navigation Canal southward to the Gulf of Mexico.

#### 8. Area 8

a. Portions of the following parishes are open:

i. Allen That portion east of La. 113 from the parish line to U.S. 190, north of U.S. 190 eastward to Kinder, west of U.S. 165 northward to La. 10 at Oakdale and south of La. 10 from Oakdale westward to parish line;

ii. Vernon That portion east of La. 113 from the parish line northward to Pitkin, and south of La. 10 from Pitkin southward to the parish line;

iii. Beauregard That portion east of La. 113. Also that portion west of La. 27 from parish line northward to DeRidder, south of U.S. 190 from DeRidder to Texas state line;

iv. Calcasieu That portion east of La. 27 from the parish line southward to Sulphur and north of U.S. 90 from Sulphur to the Texas state line.

### G Wildlife Management Area Regulations

#### 1. General

a. The following Rules and regulations concerning the management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject individual to citation and/or expulsion from the management area.

b. Citizens are cautioned that by entering a WMA managed by the LDWF they may be subjecting themselves and/or their vehicles to game and/or license checks, inspections and searches.

c. Wildlife management area seasons may be altered or dosed anytime by the Department Secretary in emergency situations (floods, fire or other critical circumstances).

d. Hunters may enter the WMA no earlier than 3:00 a.m. unless otherwise specified. On days when Daily permits are required, permit stations will open 2 hours before legal shooting hours. Hunters must check out and exit the WMA no later than two hours after sunset, except for Lake Boeuf, Salvador/Timken and Pointe-aux-Chenes or as otherwise specified.

e. Lands within WMA boundaries will have the same seasons and regulations pertaining to baiting and use of dogs as the WMA within which the lands are enclosed; however, with respect to private lands enclosed within a WMA, the owner or lessee may elect to hunt deer according to the regular season dates applicable to the geographic area in which the lands are located, provided that the lands are first enrolled in DMAP. Interested parties should contact the nearest LDWF regional office for additional information.

f. Dumping garbage or trash on WMAs is prohibited. Garbage and trash may be properly disposed of in designated locations if provided.

g. Disorderly conduct or hunting under influence of alcoholic beverages, chemicals and other similar substances is prohibited.

h. Commercial activities prohibited without prior approval or unless otherwise specified.

i. Damage to or removal of trees, shrubs, hard mast (acorn, pecans, etc.) and wild plants is prohibited without prior approval. Gathering and/or removal of soft fruits, mushrooms and berries shall be limited to five gallons per person per day. Persons engaged in commercial activities must obtain a permit from the Region Office.

j. Burning of marshes is prohibited except by permit. Permits may be obtained from the Fur and Refuge Division. Hunting actively burning marsh prohibited.

k. Nature Trails. Access to trails shall be limited to pedestrians only. No vehicles, ATVs, horses, mules, bicycles, etc. allowed. Removal of vegetation (standing or down) or other natural material prohibited.

l. Deer seasons are for legal buck deer unless otherwise specified.

m. Small game, when listed under the WMA regulations may include both resident game animals and game birds as well as migratory species of birds.

n. Oysters may not be harvested from any WMA, except that oysters may be harvested from private oyster leases and State Seed Grounds located within a WMA, when authorized by the Wildlife and Fisheries Commission and upon approval by the Department of Health and Hospitals.

o. Free ranging livestock prohibited.

#### 2. Permits

a. Daily. Daily permits when required shall be obtained at permit stations on or near each WMA after first presenting a valid hunting license to a Department employee. Hunters must retain permit in possession while hunting. Hunters may enter the area no earlier than two hours before legal shooting time unless otherwise specified. Hunters must checkout daily and exit the area not later than two hours after sunset unless otherwise specified.

b. Self-Clearing Permits. A Self-Clearing Permit is required for all activities (hunting, fishing, hiking, birdwatching, sightseeing, etc.) on WMAs unless otherwise specified. The Self-Clearing Permit will consist of three portions: check in, check out and a Vehicle Tag. On WMAs where Self-Clearing Permits are required, all persons must obtain a WMA Self-Clearing Permit from an Information Station. The check in portion must be completed and put in a permit box before each day's activity on the day of the activity. Users may check-in one day in advance of use. The check out portion must be carried by each person while on

the WMA and must be completed and put in a permit box immediately upon exiting the WMA or within 72 hours after checking in if hunting from a camp. Each person must leave the Vehicle Tag portion of his permit on the dashboard of the vehicle used to enter into the WMA in such a way that it can be easily read from outside of the vehicle. This must be done only when the vehicle is parked and left unattended on the WMA. If an ATV, boat or other type vehicle was used to enter the WMA, then the vehicle tag must be attached to that vehicle in such a manner that it can be readily seen and read. No permit is required of fishers and boaters who do not travel on a WMA road and/or launch on the WMA as long as they do not get out of the boat and onto the WMA. When Mandatory Deer Checks are specified on WMAs, hunters must check deer at a check station. Call the appropriate Region office for the location of the deer check station on these WMAs. (Self-Clearing Permits are not required for persons only traveling through the WMA provided that the most direct route is taken and no activities or stops take place.)

c. Wild Louisiana Stamp. Persons using WMAs or other department administered lands for purposes other than hunting and fishing, such as camping, shooting on rifle ranges, berry picking, hiking, photography, bird-watching and the like, must possess one of the following: a valid Wild Louisiana stamp, a valid Louisiana fishing license, or a valid Louisiana hunting license. Persons younger than 16 or older than 60 years of age are exempt from this requirement.

### 3. Special Seasons

a. Youth Deer Hunt. Only youths younger than 16 years of age may hunt. All other seasons are closed except Handicapped Seasons. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of a hunter safety certification, a valid Louisiana hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. Legal firearms are the same as described for deer hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Contact the appropriate region office for special check station locations when daily permits are required and maps of specific hunting areas. Either-sex deer may be taken on WMAs with youth hunts. Consult the regulations pamphlet for WMAs offering youth hunts.

b. Handicapped Season. For hunters possessing a Physically Challenged Hunter Permit only. Participants must possess a Physically Challenged Hunter Permit. Contact region office for permit application and map of specific hunting area. Consult the regulations pamphlet for WMAs offering Handicapped Seasons. Pointe-aux-Chenes will have an experimental Lottery Handicapped waterfowl hunt. Contact New Iberia Office, Fur and Refuge Division for details.

c. Deer Lottery Hunts. Hunts restricted to those persons selected as a result of the pre-application lottery. Consult the regulations pamphlet for deadlines. A non-refundable application fee must be sent with application.

Contact region offices for applications. Consult regulations pamphlet for WMAs offering lottery hunts.

d. Turkey Lottery Hunts. Hunts restricted to those persons selected by lottery. Consult the regulations pamphlet for deadlines. All turkeys must be reported at Self Clearing station. Contact Region Offices for more details. Consult separate Turkey Hunting Regulations pamphlet for WMAs offering lottery hunts.

e. Trapping. Permits to take fur bearers from WMAs may be obtained at appropriate offices when required. Consult Annual Trapping Regulations for specific dates. All traps must be run daily. Traps with teeth are illegal. On WMAs where permits are required, each trapper must submit an annual trapping report to the Region Office where his permit was obtained. Non-compliance will result in forfeiture of trapping privileges on the WMAs. Permits may be obtained only between hours of 8 a.m. to 4:30 p.m. on normal working days at region offices. Hunter orange required when a deer gun season is in progress. A permit is required to carry a firearm outside of the normal hunting season and is available at the Region Office.

f. Raccoon Hunting. A licensed hunter may take raccoon or opossum, one per person per day, during daylight hours only, during the open rabbit season on WMAs. Nighttime Experimental Season dates for specific WMAs are for nighttime raccoon hunting and permits may be required. There is no bag limit for raccoons at night unless specified in the annual regulations pamphlet. Raccoon hunters with dogs must submit an annual report of their kill to the region office for WMAs where permits are required. Non-compliance will result in forfeiture of raccoon or all hunting privileges on WMAs. Permits, when required, may be obtained at region offices only between hours of 8 a.m. to 4:30 p.m. on normal working days.

g. Commercial Fishing. Permits are required of all commercial fishermen using Grassy Lake, Pomme de Terre and Spring Bayou WMAs. Drag seines (except minnow and bait seines) are prohibited except experimental bait seines allowed on Dewey Wills WMA north of La. 28 in Diversion Canal. Commercial fishing is prohibited during regular waterfowl seasons on Grand Bay, Silver Lake and Lower Sunk Lake on Three Rivers WMA. Commercial fishing is prohibited on Salvador/Timken, Ouachita and Pointe-aux-Chenes WMAs except commercial fishing on Pointe-aux-Chenes is allowed in Cut Off Canal and Wonder Lake. No commercial fishing activity shall impede navigation and no unattended vessels or barges will be allowed. Non-compliance with permit regulations will result in revocation of commercial fishing privileges for the period the license is issued and one year thereafter. Commercial fishing is allowed on Pass-a-Loutre and Atchafalaya Delta WMAs. See Pass-a-Loutre for additional commercial fishing regulations on mullet.

h. Sport Fishing. Sport fishing, crawfishing and frogging are allowed on WMAs when in compliance with current laws and regulations except as otherwise specified under individual WMA listings.

i. Additional Department Lands. The Department manages additional lands that are included in the WMA system and available for public recreation. Small tracts are located in Rapides, Vernon, Evangeline, St. Helena and other parishes. These small tracts have been acquired from the

Farmers Home Administration or other sources for conservation purposes. Contact the appropriate Wildlife and Fisheries Region Office for specific information and any additional season dates.

#### 4. Firearms

a. Firearms having live ammunition in the chamber, magazine, cylinder or clip when attached to firearms are not allowed in or on vehicles, boats under power, motorcycles, ATVs, ATCs or in camping areas on WMAs. Firearms may not be carried on any area before or after permitted hours except in authorized camping areas.

b. Firearms and bows and arrows are not allowed on WMAs during closed seasons except on designated shooting ranges or as permitted for trapping. Bows and broadhead arrows are not allowed on WMAs except during deer archery season, turkey season or as permitted for bowfishing.

c. Encased or broken down firearms and any game harvested may be transported through the areas by the most direct route provided that no other route exists except as specified under Wildlife Management Area listing.

d. Loaded firearms are not allowed near WMA check stations.

e. Centerfire rifles and handguns larger than .22 caliber rimfire, shotgun slugs or shot larger than BB lead or F steel shot cannot be carried onto any WMA except during modern firearm deer season.

f. Target shooting and other forms of practice shooting are prohibited on WMAs except as otherwise specified.

g. Discharging of firearms on or hunting from designated roads, ATV trails or their rights-of-way is prohibited during the modern firearm and muzzleloader deer season.

#### 5. Methods of Taking Game

a. Moving deer or hogs on a WMA with organized drivers and standers, drivers or making use of noises or noise-making devices is prohibited.

b. On Wildlife Management Areas, Federal Refuges and National Forest Lands the daily limit shall be one deer per day, six per season (all segments included) by all methods of take.

c. Baiting or hunting over bait is prohibited on all WMAs (hogs included). Unmarked hogs may be taken on some WMAs by properly licensed hunters from the beginning of archery season on the area until February 29 and only with guns/ammunition or bow and arrow legal for specified seasons in progress. Consult the specific WMA for additional information. Proper licenses and permits are required for hunting.

d. Hunters who kill deer on WMAs that require daily permits must have deer checked at the check station on same day of kill. Deer may not be skinned or have any external body parts removed including but not limited to feet, legs, tail, head or ears before being checked out.

e. Deer hunting on WMAs is restricted to still hunting only. No WMA will be open for deer during early still hunt season unless specified in the regulation pamphlet.

f. Construction of and/or hunting from permanent tree stands or permanent blinds on WMAs is prohibited. Any permanent stand or permanent blind will be removed and destroyed.

g. On Wildlife Management Areas and Refuges, all deer stands must be removed from the area no later than two hours after the end of legal shooting hours each day. Hunting from utility poles, high tension power lines, oil and gas exploration facilities or platforms is prohibited.

h. A permanent blind is any blind using non-natural materials or having a frame which is not dismantled within two hours after the end of legal shooting time each day. Blinds with frames of wood, plastic, metal, poles, wire, mesh, webbing or other materials may be used but must be removed from the WMA within two hours after the end of legal shooting time each day. Blinds made solely of natural vegetation and not held together by nails or other metallic fasteners may be left in place but cannot be used to reserve hunting locations. All decoys must be removed from the WMA daily.

i. It is illegal to save or reserve hunting locations using permanent stands or blinds. Stands or blinds attached to trees with screws, nails, spikes, etc. are illegal.

j. Tree climbing spurs, spikes or screw-in steps are prohibited.

k. Unattended decoys will be confiscated and forfeited to the Department of Wildlife and Fisheries and disposed of by the Department. This action is necessary to prevent preemption of hunting space.

l. Hunters shall not hunt, take or pursue birds or animals from moving vehicles on any WMA. No person shall take birds or animals from or by any motor boat or sail boat unless the motor has been completely shut off and/or the sail furled and its progress therefrom has ceased.

m. Spot lighting (shining) from vehicles is prohibited on all WMAs.

n. Horses and mules may be ridden on Wildlife Management Areas except where prohibited and except during gun seasons for deer and turkey. Riding is restricted to designated roads and trails. Hunting and trapping from horses and mules is prohibited except for quail hunting or as otherwise specified.

o. All hunters except waterfowl hunters and dove hunters (including archers and small game hunters) on WMAs must display 400 square inches of "Hunter Orange" and wear a "Hunter Orange" cap during open gun season for deer. Quail hunters, woodcock hunters and archers (while on the ground) as well as hunters participating in special dog seasons for rabbit and squirrel are required to wear a minimum of a "Hunter Orange" cap. Also all persons afield during hunting seasons are encouraged to display "Hunter Orange."

p. Archery Season for Deer. The archery season on WMAs is the same as outside and is open for either sex deer except as otherwise specified on individual WMAs. Archery season restricted on Atchafalaya Delta and closed on certain WMAs when special seasons for youth or handicapped hunts are in progress. Consult regulations pamphlet for specific seasons.

q. Either sex deer may be taken on WMAs at any time during archery season except when bucks only seasons are in progress on the respective WMAs. Archers must abide by bucks only regulations and other restrictions when such seasons are in progress.

r. Muzzleloader Season for Deer. Either sex unless otherwise specified. See WMA deer schedule.



## 6. Camping

a. Camping on WMAs, including trailers, houseboats, recreational vehicles and tents, is allowed only in designated areas and for a period not to exceed sixteen 16 consecutive days, regardless if the camp is attended or unattended. Houseboats shall not impede navigation. At the end of the 16 day period, camps must be removed from the area for at least 48 hours. Camping area use limited exclusively to outdoor recreational activities.

b. Houseboats are prohibited from overnight mooring within WMAs except on stream banks adjacent to Department-owned designated camping areas. Overnight mooring of vessels that provide lodging for hire are prohibited on WMAs. On Atchafalaya Delta WMA and Pass-a-Loutre, houseboats may be moored in specially designated areas throughout the hunting season. At all other times of the year, mooring is limited to a period not to exceed 16 consecutive days. Permits are required for the mooring of houseboats on Pass-a-Loutre and Atchafalaya Delta WMAs. Permits must be obtained from the New Iberia office.

c. Discharge of human waste onto lands or waters of any WMA is strictly prohibited by State and Federal law. In the event public restroom facilities are not available at a WMA, the following is required. Anyone camping on a WMA in a camper, trailer, or other unit (other than a houseboat or tent) shall have and shall utilize an operational disposal system attached to the unit. Tent campers shall have and shall utilize portable waste disposal units and shall remove all human waste from the WMA upon leaving. Houseboats moored on a WMA shall have a permit or letter of certification from the Health Unit (Department of Health and Hospitals) of the parish within which the WMA occurs verifying that it has an approved sewerage disposal system on board. Further, that system shall be utilized by occupants of the houseboats when on the WMA.

d. No refuse or garbage may be dumped from these boats.

e. Firearms may not be kept loaded or discharged in a camping area.

f. Campsites must be cleaned by occupants prior to leaving and all refuse placed in designated locations when provided or carried off by campers.

g. Non-compliance with camping regulations will subject occupant to immediate expulsion and/or citation, including restitution for damages.

h. Swimming is prohibited within 100 yards of boat launching ramps.

## 7. Restricted Areas

a. All oil and gas production facilities (wells, pumping stations and storage facilities) are off limits.

b. No unauthorized entry or hunting in restricted areas or refuges.

8. Dogs. All use of dogs on WMAs, except for bird hunting and duck hunting, is Experimental as required by law. Having or using dogs on any WMA is prohibited except for nighttime experimental raccoon hunting, squirrel hunting, rabbit hunting, bird hunting, duck hunting and bird dog training when allowed; see individual WMA season listings for WMAs that allow dogs and dates. Dogs running at large are prohibited on WMAs. The owner or handler of said dogs shall be liable. Only recognizable breeds of bird

dogs and retrievers are allowed for quail and migratory bird hunting. Only beagle hounds which do not exceed 15 inches at the front shoulders and which have recognizable characteristics of the breed may be used on WMAs having experimental rabbit seasons.

## 9. Vehicles

a. An all-terrain vehicle is an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 pounds, length 85 inches, and width 48 inches. ATV tires are restricted to those no larger than 25 x 12 with a maximum 1/2 inch lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

b. Vehicles having wheels with a wheel-tire combination having a radius of 17 inches or more from the center of the hub (measured horizontal to ground) are prohibited.

c. The testing, racing, speeding or unusual maneuvering of any type of vehicle is prohibited within wildlife management areas due to property damages resulting in high maintenance costs, disturbance of wildlife and destruction of forest reproduction.

d. Tractor or implement tires with farm tread designs R1, R2 and R4 known commonly as spade or lug grip types are prohibited on all vehicles.

e. Airboats, aircraft, personal water craft and hover craft are prohibited on all WMAs and Refuges. Personal water craft are defined as a vessel which uses an inboard motor powering a water jet pump as its primary source of propulsion and is designed to be operated by a person sitting, standing or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel. Personal water craft allowed on designated areas of Alexander State Forest WMA.

f. No internal combustion engines allowed in certain Greentree reservoirs.

g. Driving or parking vehicles on food or cover plots and strips is prohibited.

h. Blocking the entrance to roads and trails is prohibited.

i. Motorized vehicles, including ATVs, and motorcycles, are restricted entirely to designated roads and ATV trails as indicated on WMA maps. WMA maps available at all region offices. This restriction does not apply to bicycles.

j. Use of special ATV trails for handicapped persons is restricted to special ATV handicapped permittees. Handicapped ATV permittees are restricted to handicapped ATV trails or other ATV trails only as indicated on WMA maps. Persons 60 years of age and older, with proof of age, are also allowed to use special handicapped trails and need not obtain a permit. However, these persons must abide by all Rules in place for these trails. Handicapped persons should make application for a Physically Challenged Hunter Program Permit with the Department.

k. Entrances to ATV trails will be marked with peach colored paint. Entrances to handicapped-only ATV trails will be marked with blue colored paint. Routes of all trails are as indicated on WMA maps. Deviation from the trails indicated on the map constitutes a violation of WMA Rules and regulations.

l. Roads and trails may be closed due to poor condition, construction or wet weather.

m. ATVs, and motorcycles cannot be left overnight on WMAs except on designated camping areas. ATVs are prohibited from two hours after sunset to 3 a.m.. ATVs are prohibited from March 1 through August 31 except certain trails may be open during this time period to provide access for fishing or other purpose. These trails will be marked by signs at the entrance of the trail and designated on WMA maps. Raccoon hunters may use ATVs during nighttime raccoon take seasons only.

n. Caution: Many department-maintained roadways on WMAs are unimproved and substandard. A maximum 20 mph speed limit is recommended for all land vehicles using these roads.

10. Commercial Activities. Hunting Guides/Outfitters: No person or group may act as a hunting guide, outfitter or in any other capacity for which they are paid or promised to be paid directly or indirectly by any other individual or individuals for services rendered to any other person or persons hunting on any Wildlife Management Area, regardless of whether such payment is for guiding, outfitting, lodging or club memberships.

11. Wildlife Management Areas Basic Season Structure. For season dates, bag limits, shooting hours, special seasons and other information consult the annual regulations pamphlet for specific details.

12. Resident Small Game (squirrel, rabbit, quail, dove, woodcock, snipe, rail and gallinule). Consult regulations pamphlet.

13. Waterfowl (ducks, geese and coots). Consult regulations pamphlet.

14. Archery. Consult regulations pamphlet.

15. Hogs. Consult regulations pamphlet.

16. Outlaw Quadrupeds and Birds. Consult regulations pamphlet. During hunting seasons specified on WMAs, incidental take of outlaw quadrupeds and birds is allowed by properly licensed hunters and only with guns or bows and arrows legal for season in progress on WMA. However, crows, blackbirds, grackles and cowbirds may not be taken before September 1 or after January 2.

17. Wildlife Management Areas Hunting Schedule and Regulations

a. Acadiana Conservation Corridor

b. Alexander State Forest. Vehicles restricted to paved and graveled roads. No parking on or fishing or swimming from bridges. No open fires except in recreation areas.

c. Atchafalaya Delta. Water control structures are not to be tampered with or altered by anyone other than employees of the Department of Wildlife and Fisheries at any time. ATVs, ATCs and motorcycles prohibited.

d. Attakapas

e. Bayou Macon. All night activities prohibited except as otherwise provided. Mules are allowed for nighttime raccoon hunting.

f. Bayou Pierre

g. Bens Creek

h. Big Colewa Bayou. All nighttime activities prohibited.

i. Big Lake

j. Biloxi

k. Bodcau

l. Boeuf

m. Boise-Vernon

n. Buckhorn

o. Camp Beauregard. Daily military clearance required for all recreational users. Registration for use of Self Clearing Permit required once per year. All game harvested must be reported. Retriever training allowed on selected portions of the WMA. Contact the Region office for specific details.

p. Dewey W. Wills. Crawfish: 100 pounds per person per day.

q. Elm Hall. No ATVs allowed.

r. Floy McElroy

s. Fort Polk. Daily military clearance required to hunt or trap. Registration for use of Self Clearing Permit required once per year. Special regulations apply to ATV users.

t. Grassy Lake. Commercial Fishing: Permitted except on Smith Bay, Red River Bay and Grassy Lake proper on Saturday and Sunday and during waterfowl season. Permits available from area supervisor at Spring Bayou headquarters or Opelousas Region Office. No hunting in restricted area.

u. Jackson-Bienville. ATVs are allowed on non-public maintained gravel roads and timber management woods, roads and trails.

v. Joyce. Swamp Walk: Adhere to all WMA Rules and regulations. No firearms or hunting allowed within 100 yards of walkways. Check hunting schedule and use walkway at your own risk.

w. Lake Boeuf

x. Lake Ramsay. Foot traffic only Call vehicles restricted to Parish Roads.

y. Little River

z. Loggy Bayou

aa. Manchac. Crabs: No crab traps allowed. Attended lift nets are allowed.

bb. Maurepas Swamp

cc. Ouachita. Waterfowl Refuge: North of La. Hwy. 15 closed to all hunting, fishing and trapping during duck season including early teal season. Crawfish: 100 pounds per person per day limit. Night crawfishing prohibited. No traps or nets left overnight. Commercial Fishing: Closed. All nighttime activities prohibited except as otherwise provided.

dd. Pass-a-Loutre. Commercial Fishing: Same as outside. Commercial mullet fishing open only in: South Pass, Pass-a-Loutre, North Pass, Southeast Pass, Northeast Pass, Dennis Pass, Johnson Pass, Loomis Pass, Cadro Pass, Wright Pass, Viveats Pass, Cognevich Pass, Blind Bay, Redfish Bay, Garden Island Bay, Northshore Bay, East Bay (west of barrier islands) and oil and gas canals as described on the Department Pass-a-Loutre WMA map. ATVs, ATCs and motorcycles prohibited on this area. Oyster harvesting is prohibited.

ee. Pearl River. All roads closed 8 p.m. to 4:30 a.m. to all vehicles. Old Hwy. 11 will be closed when river gauge at Pearl River, Louisiana, reaches 16.5 feet. All hunting will be closed when the river stage at Pearl River reaches 16.5 feet except waterfowl hunting south of Hwy. 90. No hunting in the vicinity of Nature Trail. Observe "No Hunting" signs.

Rifle range open noon until 4 p.m. Friday, and 8 a.m. to 4:30 p.m. Saturday and Sunday with a fee.

ff. Peason Ridge. Daily military clearance required to hunt or trap. Registration for use of Self Clearing Permit required once per year. Special federal regulations apply to ATV users.

gg. Plum Creek (Formerly Georgia-Pacific). except as otherwise provided, all nighttime activities prohibited.

hh. Pointe-aux-Chenes. Hunting until 12 noon on ALL GAME, except for DOVE hunting and experimental youth deer hunt as specified in regulation pamphlet. Point Farm: Gate will be open during each Saturday of the second split of dove season and all weekends during month of February. No motorized vessels allowed in the drainage ditches. Recreational Fishing: Shrimp may be taken by the use of cast nets only. During the inside open shrimp season, 25 pounds per boat per day (heads on) shall be allowed. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) may be taken for bait. Oyster harvesting is prohibited. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none are to remain set overnight. Twelve dozen crabs are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the wildlife management area and shall be limited to 100 pounds per boat or group. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. Mudboats or vessels with engines larger than 25 h.p. prohibited in the Montegut and Grand Bayou marsh management units. Public is permitted to travel anytime through the WMA for access purposes only, in the waterways known as Grand Bayou, Humble Canal, Little Bayou Blue and Grand Bayou Blue. Vehicles prohibited on Point Farm properties unless authorized by the department. ATVs, ATCs and motorcycles prohibited on this area.

ii. Pomme de Terre. Commercial Fishing: permitted Monday through Friday, except closed during duck season. Commercial Fishing permits available from area supervisor, Opelousas Region Office or Spring Bayou headquarters. Sport Fishing: Same as outside except allowed after 2 p.m. only during waterfowl season. Crawfish: April 1 - July 31, recreational only, 100 lbs. per boat or group daily.

jj. Red River. Crawfishing prohibited on Wetland Restoration Areas.

kk. Russell Sage. Transporting trash or garbage on WMA roads is prohibited. All nighttime activities prohibited except as otherwise provided. Note: All season dates on Chauvin Tract (U.S. 165 North) same as outside, except still hunt only and except deer hunting restricted to archery only. Waterfowl hunting after 2 p.m. prohibited. All vehicles including ATVs prohibited.

ll. Sabine

mm. Sabine Island. Sabine Island boundaries are Sabine River on the west, Cut-Off Bayou on the north, and Old River and Big Bayou on the south and east.

nn. Salvador/Timken. Hunting until 12 noon only for all game. All nighttime activities prohibited, including frogging. Recreational Fishing: Shrimp may be taken by the use of cast nets only. During the inside open shrimp season,

25 pounds per boat per day (heads on) shall be permitted. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) may be taken for bait. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none of the lines are to remain set overnight. Twelve dozen crabs maximum are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the wildlife management area and shall be limited to 100 pounds per boat or group. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. Boats powered by internal combustion engines having horsepower ratings above 25 hp are permitted only in oil company access canals, Louisiana Cypress Canal, the Netherlands Pond including the West Canal, Lakes - "Baie Des Chactas" and Baie du Cabanage" and the Rathborne Access ditch. Operation of the above described internal combustion engines in interior ditches is prohibited except by experimental permit to be obtained from the New Orleans Office, Fur and Refuge Division, Room 217. Pulling boats over levees, dams or water control structures or any other activities which cause detriment to the integrity of levees, dams and water control structures is prohibited. Special Use Permits may be issued for persons interested in clearing existing ditches (trenasses). Permits will be considered on a case-by-case basis. Contact Pointe-aux-Chenes. ATVs, ATCs and motorcycles prohibited on this area.

oo. Sandy Hollow. Bird Dog Training: Consult regulation pamphlet. Wild birds only (use of pen-raised birds prohibited). Bird Dog Field Trials: Permit required from Baton Rouge Region Office. Horseback Riding: Organized trail rides prohibited. Horses and mules are specifically prohibited during turkey and gun season for deer except as allowed for bird dog field trials. No horses and mules on green planted areas. No motorized vehicles allowed off designated roads.

pp. Sherburne. Crawfishing: Recreational crawfishing only on the North and South Farm Complexes. Crawfish harvest limited to 100 pounds per vehicle or boat per day. No traps or nets left overnight. No motorized watercraft allowed on farm complex. Commercial crawfishing allowed on the remainder of the area. Permit is required. Retriever training allowed on selected portions of the WMA. Contact the Region office for specific details. Vehicular traffic prohibited on east Atchafalaya River levee within Sherburne WMA boundaries. Rifle and Pistol Range open daily. Skeet ranges open by appointment only, contact Hunter Education Office. No trespassing in restricted area behind ranges. Note: Atchafalaya National Wildlife Refuge, and U.S. Army Corps of Engineers land holdings adjacent to the Sherburne Wildlife Management Area will have the same Rules and regulations as Sherburne WMA. No hunting or trapping in restricted area.

qq. Sicily Island Hills. Firearms and any game harvested cannot be transported through the area except during the corresponding open season on area.

rr. Soda Lake. No motorized vehicles allowed. All trapping and hunting prohibited except archery hunting for deer.

ss. Spring Bayou. Commercial Fishing: permitted Monday through Friday except slat traps and hoop nets permitted any day. Permits available from area supervisor or Opelousas Region Office. Closed until after 2 p.m. during waterfowl season. Sport Fishing: Same as outside except allowed only after 2 p.m. during waterfowl season. Crawfish: recreational only. No hunting allowed in headquarters area. Only overnight campers allowed in the improved Boggy Bayou Camping area. Rules and regulations posted at camp site. A fee is assessed for use of this camp site. Water skiing allowed only in Old River and Grand Lac.

tt. Thistlethwaite. No hunting or trapping in restricted area (See WMA Map). All motorized vehicles restricted to improved roads only. All users must enter and leave through main gate only. No entry into restricted areas.

uu. Three Rivers

vv. Tunica Hills. All vehicles restricted to Parish roads. ATVs restricted to designated trails. Driving on food plots prohibited. Access to restricted areas is unauthorized. Refer to WMA map. Camping prohibited on area. North of Hwy. 66 (Angola Tract) closed to the general public March 1-September 30 except spring turkey hunting access allowed for those individuals drawn for special lottery hunt.

ww. Union. All nighttime activities prohibited except as otherwise provided.

xx. West Bay. Road Travel and Hunting Restrictions: All motorized vehicles restricted to designated roads. Refer to WMA map for location of designated roads. Hunting prohibited on roads designated for motorized vehicular travel.

yy. Wisner

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115 and R.S. 56:116.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:1279 (July 1999), amended LR 26:1494 (July 2000), LR 27:1049 (July 2001), LR 28:1603 (July 2002), LR 29:

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public hearings will be held at the following locations: Region 1C March 11, 7 p.m., Minden Civic Center, Minden, LA; Region 2C March 19, 7 p.m., Ruston Civic Center, Ruston, LA; Region 3C March 11, 7 p.m., Alexandria City Hall Convention Center, Alexandria, LA; Region 4C March 12, 7 p.m., Concordia Parish Community Center, Ferriday, LA; Region 5C March 13, 6 p.m., Burton Coliseum, Chalkley Room, Lake Charles, LA; Region 6C March 19, 7 p.m., National Marine Fisheries Building, Suite 119, Lafayette, LA; Region 7C March 10, 7 p.m., Pontchatoula High School Auditorium, Pontchatoula, LA. Also comments will be accepted at regularly scheduled Wildlife and Fisheries Commission Meetings from April through July. Interested persons may submit written comments relative to

the proposed Rule until Wednesday, May 7, 2003 to Mr. Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Terry D. Denmon  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: General and Wildlife Management Area  
(WMA) Hunting**

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

This Rule amends permanent Rules and regulations for the state at large as well as Wildlife Management Areas. Establishment of hunting regulations is an annual process. The cost of implementing the proposed Rules, aside from staff time, is the production of the regulation pamphlet. Cost of printing the 2002-2003 state hunting pamphlet was \$14, 163 and no major increase in expenditures is anticipated. Local government units will not be impacted.

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

State hunting license fee collections are between 9.0 and 10.0 million dollars annually. Additionally, hunting and related activities generate approximately \$25.3 million in state sales tax, \$5.1 million in state income tax, and \$23 million in local sales tax revenues annually (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting season being established and a potential loss of some of these revenues.

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

Over 300,000 hunters and numerous businesses that provide goods and services to hunters are directly affected by this proposal. Hunting in Louisiana generates in excess of \$581,000,000 annually through the sale of outdoor related equipment, associated items and trip related expenditures (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting seasons being established and a potential loss of commerce revenues associated with these activities.

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

Hunting in Louisiana provides 9,184 jobs (IAFWA; Southwick Associates, 2002). Not establishing hunting seasons might have a negative and direct impact on these jobs.

James L. Patton  
Undersecretary  
0303#091

Robert E. Hosse  
General Government Section Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

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

Public Hearing C2002 State Implementation Plan (SIP)  
General Revisions

Under the authority of the Environmental Quality Act, R.S. 30:2051 et seq., the secretary gives notice of proposed general revisions to the air quality State Implementation Plan (SIP). The revisions include amendments to various air quality rules in LAC 33:III.Chapters 5, 22, 21, and 28 that were previously promulgated in 2002, and which were not previously included in other revisions to the SIP.

A public hearing will be held on April 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana. Interested persons are invited to attend and submit oral comments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Willbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or (225) 765-0399.

All interested persons are invited to submit written comments on the proposed general revisions to the SIP. Comments must be submitted no later than 4:30 p.m. on May 1, 2003. Comments should be mailed to Sandra Hilton, Office of Environmental Assessment, Plan Development Section, Box 82178, Baton Rouge, Louisiana 70884-2178 or faxed to (225)765-0617. Copies of this document can be purchased by contacting the Records Management Section at (225)765-0843. A check or money order is required in advance for each copy of the document.

A copy of the general revisions to the SIP may be viewed Monday through Friday, from 8 a.m. to 4:30 p.m., at the following DEQ locations: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508, or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.  
Assistant Secretary

0303#074

## 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
Miss-Tex Oil Producers	Aubrey	M	Paul A Leblanc	1	130109
Edwin L. Cox	Ramos	L	C SU A; Interctl Shipyard Inc	1	122538
W. L. Estis	St. Martinville	L	3390 RB SUA; Fournet E	1	(30)1628 60
MBM Equipment	Wildcat	M	Norris	1	177884

James H. Welsh  
Commissioner

0303#078

## POTPOURRI

**Department of Social Services  
Office of Community Services**

Social Services Block Grant Intended Use Report

The Department of Social Services (DSS) announces opportunities for public review of the state's pre-expenditure report on intended uses of Social Services Block Grant (SSBG) funds for the state fiscal year (SFY) beginning July 1, 2003, and ending June 30, 2004. The proposed FY 2003-2004 SSBG Intended Use Report has been developed in compliance with the requirements of Section 2004 of the Social Security Act, as amended, and includes information on the types of activities to be supported and the categories or characteristics of individuals to be served through use of the state's allocation of SSBG funds. Section 2004 of the Social Security Act further requires that the SSBG pre-expenditure report be "made public within the state in such manner as to facilitate comment by any person." The DSS, as the designated state services agency, will continue to administer programs funded under the SSBG in accordance with applicable statutory requirements and federal

regulations. The DSS/Office of Community Services (OCS) will be responsible for provision of social services, by direct delivery and vendor purchase, through use of federal SSBG funds. Estimated SSBG expenditures for SFY 2003-2004 total \$42,817,517.

Louisiana through the DSS/OCS will utilize its allotted funds to provide comprehensive social services on behalf of children and families in fulfillment of legislative mandates for child protection and child welfare programs. These mandated services, and certain other essential social services, are provided without regard to income to individuals in need. Individuals to be served also include low-income persons as defined in the Intended Use Report who meet eligibility criteria for services provided through SSBG funding.

Services designated for provision through SSBG funding for SFY 2003-2004 are:

1. adoption (pre-placement to termination of parental rights);
2. child protection (investigation of child abuse/neglect reports, assessment, evaluation, social work intervention, shelter care, counseling, referrals, and follow-up);
3. day care for children (direct care for portion of the 24-hour day);
4. family services (social work intervention subsequent to validation of a report of child abuse/neglect, counseling to high risk groups); and,
5. foster care/residential habilitation services (foster, residential care, and treatment on a 24-hour basis).

B. Definitions for the proposed services are set forth in the Intended Use Report.

C. Persons eligible for SSBG funded services include:

1. persons without regard to income, who are in need of adoption services, child protection, family services, and foster care/residential habilitation services;
2. individuals without regard to income who are recipients of Title IV-E adoption assistance;

3. recipients of supplemental security income and recipients of temporary assistance for needy families (TANF) and those persons whose needs were taken into account in determining the needs of TANF recipients;

4. low-income persons (income eligibles) whose gross monthly income is not more than 125 percent of the poverty level. A family of four with gross monthly income of not more than \$1,917 would qualify as income eligible for services; and

5. persons receiving Title XIX (medicaid) benefits and certain medicaid applicants identified in the proposed plan as group eligibles.

The proposed SSBG Intended Use Report for SFY 2003-2004 will be available for public review at all OCS parish and regional offices Monday through Friday from 8:30 a.m. to 4:00 p.m. Copies are available without charge by telephone request to (225) 342-1553 or by writing the Assistant Secretary, Office of Community Services, Box 3318, Baton Rouge, LA 70821.

A public hearing on the proposed SSBG Intended Use Report for SFY 2003-2004 is scheduled for 10:00 a.m. on Thursday, April 10, 2003, at the Office of Community Services, in the Commerce Building, 333 Laurel Street, Training Room 652, Baton Rouge, LA 70801

At the public hearing all interested persons will have the opportunity to provide recommendations on the proposed SSBG plan, orally or in writing. Inquiries and comments on the proposed plan may be submitted until the close of business, Friday, May 9, 2003, to the Assistant Secretary, OCS, at the above mailing address.

Post expenditure reports for the SSBG program for SFY 2000-2001 and SFY 2001-2002 are included in the SSBG Intended Use Report for SFY 2003-2004, and, are available for public review at the Office of Community Services, 333 Laurel Street, Room 645, Baton Rouge, LA 70801.

Gwendolyn Hamilton  
Secretary

0303#081

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