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EXECUTIVE ORDER KBB 05-22

Maritime Advisory Task Force

WHEREAS, Executive Order No. KBB 2004-55, issued on December 9, 2004, recreated the Maritime Advisory Task Force (hereafter "Task Force") in order to make recommendations on methods of promoting and protecting Louisiana's maritime industry and increasing the state's competitiveness in global maritime markets;

WHEREAS, Executive Order No. 2005-4, issued on February 23, 2005, amended Executive Order No. KBB 2004-55, in order to extend the time period for such Task Force to submit its report to the governor; and

WHEREAS, it is necessary to amend Executive Order No. KBB 2004-55 in order to modify the membership of the Task Force;

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

SECTION 1: Section 4 of Executive Order No. KBB 2004-55, issued on December 9, 2004, as amended by Executive Order No. KBB 2005-4, is amended as follows:

A. The Council shall be composed of four (4) ex-officio members, selected as follows:

1. The governor, or the governor's designee;
2. The secretary of the Department of Economic Development, or the secretary's designee;
3. The chair of the House Committee on Transportation, Highways, and Public Works, or the chair's designee;
4. The chair of the Senate Committee on Transportation, Highways, and Public Works, or the chair's designee;

B. The Council shall also be composed of eleven (11) members who shall be appointed by, and serve at the pleasure of the governor, selected as follows:

1. one (1) representative of the shallow draft maritime industry;
2. one (1) representative of the deep draft maritime industry;
3. one (1) representative of the shipyard industry;
4. one (1) representative of the ports on the Mississippi River;
5. one (1) representative of the ports on the Gulf/Intracoastal Canal;
6. one (1) representative of the ports on the Red River;
7. one (1) ship pilot commissioned by the state of Louisiana;
8. one (1) representative of passenger vessels;
9. one (1) representative of the offshore supply industry; and
10. one (1) representative of the fleeting industry;
11. one (1) representative of the United States Coast Guard who shall serve in a non-voting advisory liaison capacity.

SECTION 2: All other sections, subsections, and paragraphs of Executive Order No. KBB 2004-55, as amended by Executive Order No. 2005-4, shall remain in full force and effect.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 18th day of August, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#035

EXECUTIVE ORDER KBB 05-23

Suspension of Special Officer's Commission Bond

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, subsequently, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state, which have threaten the safety and security of the citizens of the state of Louisiana, along with the private property and public facilities;

WHEREAS, shortly thereafter, levees broke in the parish of Orleans, exacerbating the flooding, and posing further threats to the safety and security of the citizens of Louisiana, private property and public facilities;

WHEREAS, although scores of people have been rescued, there are many more persons waiting for rescue and evacuation and there have been reported acts of lawlessness in the areas affected by Hurricane Katrina;

WHEREAS, law enforcement manpower currently available to the state to respond to this emergency are insufficient and there is a need to immediately supplement the law enforcement presence in the area of the disaster;

WHEREAS, the superintendent of state police is authorized by R.S. 40:1379.1 to issue a special officer's commission from the division of state police;

WHEREAS, R.S. 40:1379.1 also provides that such person must display the need for statewide police power and power to arrest, be bonded, and adhere to all restrictive stipulations, as set forth in the special officer' s commission;

WHEREAS, the superintendent of state police has requested that the requirement of bonding of special commissioned officers be suspended temporarily so as not to delay necessary action in coping with the emergency;

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

SECTION 1: Pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:724, et seq., and more specifically R.S. 29: 724(D), the requirement of that persons issued a special officer's commission by the superintendent of state police shall be required to be bonded shall be suspended;

SECTION 2: The only requirement of R.S. 40:1379.1 which shall be suspended is the requirement of the bond and the proof thereof and all other requirements shall remain in full force and effect;

SECTION 3: The suspension of the bond requirement by a person receiving a special officer's commission from the superintendent of state police shall be extend through Sunday, September 25, 2005.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 31st day of August, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#036

EXECUTIVE ORDER KBB 05-24

Emergency Occupation of Hotel and Motel Rooms

WHEREAS, the state of Louisiana acknowledges the extreme disaster caused by Hurricane Katrina and the state of emergency the citizens of southeast Louisiana are coping with;

WHEREAS, due to the disaster caused by Hurricane Katrina, emergency situations have required the continued use of hotel and motel rooms being occupied by evacuees who were forced to leave the areas effected by the disaster; and

WHEREAS, under the provisions of Louisiana Homeland Security and Emergency Assistance and Disaster Act, and R.S. 29:724 in particular, the governor is responsible for meeting the dangers to the state and people presented by emergencies or disasters and may issue executive orders, proclamations, and regulations which shall have the effect of law;

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

SECTION 1: All evacuees occupying a room shall be allowed to continue to occupy such rooms under the normal terms, conditions, and rates of the hotel or motel.

SECTION 2: No evacuee shall be replaced by a non-evacuee as long as the evacuee currently occupying the room is able to pay the nightly rates, including applicable taxes, or is able to guarantee payment through appropriate insurance coverage or by the Federal Emergency Management Agency (FEMA).

SECTION 3: The attorney general, state police, and local governmental authorities are authorized to ensure compliance with this Order for the amount of time the state of Louisiana remains in a state of emergency pursuant to Proclamation No. 48 KBB 2005.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 1st day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#037

EXECUTIVE ORDER KBB 05-25

Emergency Evacuation by Buses

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the state of Louisiana;

WHEREAS, pursuant to Proclamation No. 48 KBB 2005, a state of emergency was declared and is currently in effect;

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

WHEREAS, there is an immediate need for mass transportation to move citizens to shelters and other safe locations from disaster areas; and

WHEREAS, given the current exigent circumstances, buses are the most reasonable and practical mode of mass transportation to move our citizens to safety;

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

SECTION 1: Each Superintendent of Education for each school district in Louisiana that remains substantially operational following the passage of Hurricane Katrina shall contact the Office of Homeland Security and Emergency

Preparedness at 225-925-3916 and provide an inventory of school buses and bus drivers in their district;

SECTION 2: As determined by the Office of Homeland Security and Emergency Preparedness, such buses shall be made available to be used as necessary for the mass transportation of Hurricane Katrina evacuees, accompanying law enforcement personnel, and necessary supplies to and from areas of concern to areas of safety;

SECTION 3: The Office of Homeland Security and Emergency Preparedness is hereby authorized to commandeer and utilize such buses for such purposes;

SECTION 4: Each Superintendent of Education for each school district in Louisiana that remains substantially operational following the passage of Hurricane Katrina shall coordinate with local law enforcement agencies and peace officers to ensure that at least one peace officer ride in each bus and at least two marked law enforcement vehicles accompany every ten buses;

SECTION 5: The Office of Homeland Security and Emergency Preparedness shall make efforts to work with the superintendents and local boards of education to minimize interruption of regular transportation of students;

SECTION 6: La. R.S. 17:158, relative to parish and city school boards providing free transportation to students, is hereby suspended until Sunday, September 25, 2005, unless reinstated sooner; and

SECTION 7: La. R.S. 32:402, relative to the requirement for drivers to secure commercial driver's license (CDL), is hereby suspended until September, 25, 2005, unless reinstated sooner. Notwithstanding the above suspension, such driver's must have a valid Louisiana or other valid driver's license of their state of residence.

SECTION 8: Executive Order No. KBB 2005-31, issued on August 31, 2005, is hereby rescinded and terminated.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 2nd day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#038

EXECUTIVE ORDER KBB 05-26

Declaration of Public Health Emergency
to Suspend Out-of-State Licensure for
Medical Professionals and Personnel

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, subsequently, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state which have threatened the safety, health, and security of the citizens of the state of Louisiana, along with the private property and public facilities;

WHEREAS shortly thereafter, levees broke in the parish of Orleans, exacerbating the flooding and posing further threats to the safety, health, and security of the citizens of Louisiana, private property and public facilities;

WHEREAS, although scores of people have been rescued, there are many more persons waiting for rescue, evacuation, and medical assistance, and many citizens have suffered or will suffer injury and/or illness;

WHEREAS, the number of medical professional and personnel currently available to the state to respond to this emergency are insufficient and there is a need to immediately supplement their number in order to serve those affected by this disaster;

WHEREAS, R.S. 29:766 authorizes the governor to declare a state of public health emergency and to suspend the provisions of any regulatory statute prescribing procedures for conducting state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency; and

WHEREAS, the secretary of the Department of Health and Hospitals and the state health officer have requested that the Louisiana state licensure laws, rules, and regulations for medical professionals and personnel be suspended for those professionals and personnel from other states offering medical services to those needing medical services as a result of this disaster provided that said out-of-state medical professionals and personnel possess current state medical licenses in good standing in their respective states of licensure and that they practice in good faith, and within the reasonable scope of his or her skills, training or ability;

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

SECTION 1: Pursuant to Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:724, et seq., and more specifically R.S. 29:766, a state of public health emergency is hereby declared.

SECTION 2: The Louisiana state licensure laws, rules, and regulations for medical professionals and personnel are hereby suspended for those medical professionals and personnel from other states offering medical services in Louisiana to those needing medical services as a result of this disaster provided that said out-of-state medical professionals and personnel possess current state medical licenses in good standing in their respective states of licensure and that they practice in good faith and within the reasonable scope of his or her skills, training or ability.

SECTION 3: All out-of-state medical professionals and personnel offering services to the state of Louisiana by authority of this Order shall be covered by La. R.S. 40:1299.39, et seq., and shall thus be considered agents of

the state of Louisiana for tort liability purposes contingent upon said out-of-state medical professional and personnel possessing current state medical licenses in good standing in their respective states of licensure and that they practice in good faith and within the reasonable scope of his or her skills, training or ability.

SECTION 4: All out-of-state medical professionals and personnel offering services to the state of Louisiana by authority of this Order shall submit to the state health officer, or his designee at the Office of Public Health within the Louisiana Department of Health and Hospitals, a copy of their respective licenses and photo identification.

SECTION 5: The suspension of these rules, regulations, and laws shall extend through Sunday, September 25, 2005.

SECTION 6: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 2nd day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#039

EXECUTIVE ORDER KBB 05-27

Emergency Procedures for Conducting State Business

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, Hurricane Katrina has caused unprecedented and extensive damage in the state of Louisiana and this tragic event has significant consequences on the financial conditions of the state; and

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the state of Louisiana;

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

SECTION 1: Cabinet members, statewide elected officials, and state agency heads are authorized and empowered to use their best judgment in purchasing necessary goods and services to satisfy the situation caused by this emergency and shall maintain, as much as practicable, documentation which includes vendors names and addresses, goods or services purchased, prices paid, invoices and the emergency related reasons for those purchases. Strict compliance with R.S. 39:1490, et seq., and 39:1551, et seq. shall not be required.

SECTION 2: The inspector general is directed and authorized to monitor those transactions conducted outside the scope of regulatory statutes, orders, rules and regulations to insure that those transactions are directly related to the emergency situation and are prudently handled and if any inappropriate transactions are noted, those situations shall be reported directly to the governor.

SECTION 3: All cabinet members, statewide elected officials and department heads are authorized to transfer the directions, job assignments, personnel, and functions of their departments for the purpose of performing or facilitating emergency services as necessary.

SECTION 4: All available resources of state government should be utilized as reasonably necessary to cope with this emergency.

SECTION 5: Subject to any applicable requirements for compensation, private property may be utilized or commandeered in those areas of the state directly affected by Hurricane Katrina. However, no private property shall be utilized or commandeered under this authority without prior consultation and approval by the Office of the Governor.

SECTION 6: Evacuations and limits on ingress and egress to the disaster area are hereby authorized to be ordered as necessary by the Office of Homeland Security and Emergency Preparedness.

SECTION 7: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 3rd day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#040

EXECUTIVE ORDER KBB 05-28

DOTD Guidelines for Vehicles, Trucks, and Loads

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the state of Louisiana;

WHEREAS, pursuant to Proclamation No. 48 KBB 2005, a state of emergency was declared and is currently in effect and as a result has requested the assistance of other states;

WHEREAS, the president of the United States of America issued a National Declaration of Emergency on August 29, 2005, that includes the state of Louisiana, which authorizes exemptions from Title 49 of the Code of Federal Regulations, Parts 390-399;

WHEREAS, the safety and welfare of the inhabitants of the affected areas of Louisiana, Mississippi, Alabama and Florida require that the movements of operators of commercial motor carriers traveling on the public highways of the state of Louisiana for the purpose of rendering assistance to the emergency relief efforts be expedited;

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

SECTION 1: The following size and weight for vehicles on roadways maintained by the state of Louisiana shall not exceed the following limitations:

A. Maximum gross vehicle weight for vehicles equipped with five (5) or more weight-bearing axles with outer bridge spans of not less than forty (40) feet, but less than fifty-one (51) feet, shall not exceed ninety thousands (90,000) pounds. No single axle vehicle shall exceed twenty thousands (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed forty-eight thousands (48,000) pounds in weight except with a permit issued by the Louisiana Department of Transportation and Development (hereafter "Department");

B. Maximum gross vehicle weight for vehicles equipped with five (5) or more weight-bearing axles with outer bridge spans of not less than fifty-one (51) feet shall not exceed ninety-five thousands (95,000) pounds. No single axle vehicle shall exceed twenty thousand (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed forty-eight thousand (48,000) pounds in weight, except with a permit issued by the Department;

C. Maximum gross vehicle weight for vehicles equipped with four (4) weight-bearing axles with outer bridge spans of not less than forty-three (43) feet shall not exceed eighty thousand (80,000) pounds. No single axle vehicle shall exceed twenty thousand (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed forty-eight thousand (48,000) pounds in weight, except with a permit issued by the Department.

D. Maximum dimensions shall not exceed fourteen (14) feet wide, fourteen (14) feet high, and ninety-five (95) feet long on Interstate highways and fourteen (14) feet wide, thirteen (13) feet six (6) inches high, and ninety-five (95) feet long on non-Interstate highways. Carriers, owners, and/or drivers of any vehicle being operated under this Order are responsible for verifying in advance that the actual dimensions and weight of the vehicle/load are acceptable for all routes being traveled. This includes, but is not limited to, areas deemed by Federal, state, or local officials as inaccessible due to damages caused by Hurricane Katrina, overhead structures and/or construction areas; and

E. Any vehicle greater than eight (8) feet six (6) inches wide and less than or equal to fourteen (14) feet wide may travel during daylight hours only, beginning thirty (30) minutes before sunrise and ending thirty (30) minutes after sunset.

SECTION 2: The commercial vehicle regulatory requirements regarding the purchase of trip permits for registration and fuel for commercial motor carriers engaged in disaster relief efforts in the state of Louisiana shall be waived. This permit waiver also applies to such vehicles/loads with weights and dimensions not exceeding those described in Section 1(A) through (D) above. However, such permits must be obtained from the Louisiana Department and Transportation and Development for vehicles exceeding those weights.

SECTION 3: Nothing in this Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, or relieve any vehicle or carrier, owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order, or other legal requirement not specifically waived herein.

SECTION 4: Nothing in this Order shall be construed or interpreted as being applicable to travel on non-state maintained highways, or as being applicable to construction and building projects that are not in support of Hurricane Katrina recovery and repair efforts.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 3rd day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#041

EXECUTIVE ORDER KBB 05-29

Suspension of Special Officer's Commission Bond
(replaces KBB 05-23)

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, subsequently, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state, which have threaten the safety and security of the citizens of the affected areas of the state of Louisiana, along with the private property and public facilities;

WHEREAS, shortly thereafter, levees broke in the parish of Orleans exacerbating the flooding, and posing further threats to the safety and security of the citizens of the affected areas, private property and public facilities;

WHEREAS, although scores of people have been rescued, there are many more persons waiting for rescue and evacuation and there have been reported acts of lawlessness in the areas affected by Hurricane Katrina;

WHEREAS, law enforcement manpower currently available to the state to respond to this emergency are insufficient and there is a need to immediately supplement the law enforcement presence in the area of the disaster;

WHEREAS, the superintendent of state police is authorized by R.S. 40:1379.1 to issue a special officer's commission from the division of state police;

WHEREAS, R.S. 40:1379.1 also provides that such person must display the need for statewide police power and power to arrest, be bonded, and adhere to all restrictive stipulations, as set forth in the special officer' s commission;

WHEREAS, the superintendent of state police has requested that the requirement of bonding of special commissioned officers be suspended temporarily so as not to delay necessary action in coping with the emergency;

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

SECTION 1: Pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:724, et seq., and more specifically R.S. 29:724(D), the requirement of persons issued a special officer's commission by the superintendent of state police to be bonded shall be suspended.

SECTION 2: The only requirement of R.S. 40:1379.1 which shall be suspended is the requirement of the bond and proof thereof, all other requirements shall remain in full force and effect;

SECTION 3: The qualification and requirements as required by the Louisiana Administration Code Title 55, Part 1, §1303(G) shall also be suspended.

SECTION 4: The suspension of the bond requirement by a person receiving a special officer's commission from the superintendent of state police and LAC 55:1303(G) shall extend through Sunday, September 25, 2005.

SECTION 5: Executive Order No. KBB 2005-23, issued on August 31, 2005, is hereby rescinded and terminated.

SECTION 6: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 3rd day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#042

EXECUTIVE ORDER KBB 05-30

Emergency Filing Procedures for UCC and Notary Bonds

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, subsequently, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state, which has threatened the safety and security of the citizens of the affected areas of the state of Louisiana, along with the private property and public facilities;

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of Louisiana;

WHEREAS, R.S. 29:724(D)(1) authorizes the governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

WHEREAS, the filing office for Uniform Commercial Code (UCC) filings is the Clerk of Court's office, except in Orleans Parish where it is the Recorder of Mortgages office;

WHEREAS, the filing of UCC-3 and UCC-3F and subsequent filings are required by law to be filed in the same Clerk of Court's office (or Recorder of Mortgages office in Orleans Parish) as the original financing statement;

WHEREAS, Hurricane Katrina and its aftermath, rendered several Clerk of Court offices and the Orleans Parish Recorder of Mortgages office inoperable and/or not fit for occupancy, rendering strict compliance with the law impossible;

WHEREAS, R.S. 1:55 provides dates in which the courts are closed due to an emergency situation are considered to be legal holidays;

WHEREAS, certain commerce can continue if filings are permitted to take place with alternate sites;

WHEREAS, R.S. 35:191, requires a notary public to be commissioned and bonded in his or her parish of residence and R.S. 35:202 requires that such notary file annual reports with the Secretary of State office on or before the anniversary date of his or her commission;

WHEREAS, Hurricane Katrina and its aftermath has resulted in several parishes of southeast Louisiana being subject to mandatory or voluntary evacuations and thousands of residents thereafter securing temporary residency outside of their original parish;

WHEREAS, the Secretary of State has requested that the governor suspend the requirement that certain UCC filings be filed in the same parish as the original financing statement and that such notary, with temporary residence outside of their original parish, not be required to file additional bonds nor be assessed penalties for late annual report filings.

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

SECTION 1: Until September 25, 2005, or the appropriate Clerk of Court's office becomes operational, all future UCC filings and subsequent UCC filings required to be filed in Jefferson, Plaquemines, St. Bernard, St. Tammany and Washington Parishes and in the Recorder of Mortgages in Orleans Parish, may be filed in any operational Clerk of Court office within the state of Louisiana.

SECTION 2: The residents of the parishes of Jefferson, Plaquemines, Orleans, St. Bernard, St. Tammany and Washington who hold a commission of notary in those parishes may exercise the functions of a notary public within the parish of their temporary residence without additional bonding requirements provided such notary registers his or her temporary address with the Secretary of State's office.

SECTION 3: Also, enforcement of annual report late penalties as provided in R.S. 35:202(B) shall be suspended against any resident of Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammy and Washington Parish during the time period of Friday, August 26, 2005, and September 25, 2005.

SECTION 4: This Order is effective upon signature and shall continue in effect Sunday, September 25, 2005, until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 7th day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#043

EXECUTIVE ORDER KBB 05-31

Emergency Evacuation by Buses

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the state of Louisiana;

WHEREAS, pursuant to Proclamation No. 48 KBB 2005, a state of emergency was declared and is currently in effect;

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

WHEREAS, there is an immediate need for mass transportation to move citizens to shelters and other safe locations from disaster areas; and

WHEREAS, given the current exigent circumstances, buses are the most reasonable and practical mode of mass transportation to move our citizens to safety;

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

SECTION 1: Each Superintendent of Education for each school district in Louisiana that remains substantially operational following the passage of Hurricane Katrina shall contact the Office of Homeland Security and Emergency Preparedness at 225-925-3916 and provide an inventory of school buses and bus drivers in their district;

SECTION 2: As determined by the Office of Homeland Security and Emergency Preparedness, such buses shall be made available to be used as necessary for the mass transportation of Hurricane Katrina evacuees, accompanying law enforcement personnel, and necessary supplies to from areas of concern to areas of safety;

SECTION 3: The Office of Homeland Security and Emergency Preparedness is hereby authorized to commandeer and utilize such buses for such purposes;

SECTION 4: Each Superintendent of Education for each school district in Louisiana that remains substantially operational following the passage of Hurricane Katrina shall coordinate with local law enforcement agencies and peace officers to ensure that at least one peace officer ride in each bus and at least two marked law enforcement vehicles accompany every ten buses;

SECTION 5: The Office of Homeland Security and Emergency Preparedness shall make efforts to work with the superintendents and local boards of education to minimize interruption of regular transportation of students;

SECTION 6: R.S. 17:158, relative to parish and city school boards providing free transportation to students, is hereby suspended until Sunday, September 25, 2005, unless reinstated sooner.

SECTION 7: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

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

Louisiana, at the Capitol, in the city of Baton Rouge, on this 31st day of August, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#044

EXECUTIVE ORDER KBB 05-32

Emergency Suspension of Prescription,
Peremption and other Legal Deadlines

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

WHEREAS, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state, which has threatened the safety and security of the citizens in the affected areas, along with the private property and public facilities;

WHEREAS, pursuant to Proclamation No. 48 KBB 2005, a state of emergency was declared for the entire state and is currently in effect;

WHEREAS, as a direct consequence of the disaster and evacuation, attorneys throughout the state have clients whom they cannot contact due to the client's evacuation outside of their home parishes and in many cases, outside the state of Louisiana;

WHEREAS, similarly, there are clients who can not contact their counsel due to counsel's evacuation as well as the extreme challenges to communication networks resulting from the hurricane and subsequent flooding;

WHEREAS, in addition, attorneys from areas affected by Hurricane Katrina have clients and cases in parishes not directly affected by this extreme disaster, but because the attorney's office is either destroyed or not accessible, the attorney is not reasonably able to timely file claims or responses on behalf of their clients;

WHEREAS, La. Constitution Art. I, Section 22 provides that all courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights;

WHEREAS, Hurricane Katrina has also rendered several of the court houses temporarily inoperable and/or not fit for occupancy;

WHEREAS, the destruction and disruption of services and infrastructure to our system of justice caused by Hurricane Katrina will have a profound impact on the basic rights to an untold number of persons unless action is taken to suspend the effects of the tolling of legal delays during the period of this emergency; and

WHEREAS, the Louisiana State Bar Association, the Louisiana Trial Lawyers Association, and the Louisiana Association of Defense Counsel jointly requested the governor to suspend all deadlines applicable to legal proceedings, including prescription and peremption, in all Louisiana state courts, administrative agencies and boards;

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

SECTION 1: All deadlines in legal proceedings, including liberative prescriptive and peremptive periods in all courts, administrative agencies, and boards are hereby suspended until at least September 25, 2005, including, but not limited to, any such deadlines set for in the following:

A. Louisiana Civil Code;
B. Louisiana Code of Civil Procedure;
C. La. R.S. Title 9, Civil Code Ancillaries;
D. La. R.S. Title 13, Courts and Judicial Procedure;
E. La. R.S. Title 23, Chapter 10, Worker's Compensation;
F. La. R.S. Title 40, Chapter 5 Part XXI-A, Malpractice Liability for State Services; and
G. La. R.S. Title 40, Chapter 5, Part XXIII, Medical Malpractice.

SECTION 2: This Order is effective upon signature and shall apply retroactively from Monday, August 29, 2005, through Sunday, September 25, 2005, unless amended, modified, terminated, or rescinded by the governor, or terminated by operation of law prior to such time.

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 6th day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#060

EXECUTIVE ORDER KBB 05-33

Declaration of Public Health Emergency and
Suspension of In-State Licensure for Medical
Professionals and Personnel Licensed Out-of-State
(Replaces KBB 05-26)

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, subsequently, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state which has threatened the safety, health, and security of the citizens of the state of Louisiana, along with the private property and public facilities;

WHEREAS, shortly thereafter, levees broke in the parish of Orleans, exacerbating the flooding and posing further threats to the safety, health, and security of the citizens of Louisiana, private property and public facilities;

WHEREAS, although scores of people have been rescued, there are many more persons waiting for rescue, evacuation, and medical assistance, and many citizens have suffered or will suffer injury and/or illness;

WHEREAS, the number of medical professional and personnel currently available to the state to respond to this emergency are insufficient and there is a need to immediately supplement their number in order to serve those affected by this disaster;

WHEREAS, R.S. 29:766 authorizes the governor to declare a state of public health emergency and to suspend the provisions of any regulatory statute prescribing procedures for conducting state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency; and

WHEREAS, the secretary of the Department of Health and Hospitals and the state health officer have requested that the Louisiana State licensure laws, rules, and regulations for medical professionals and personnel be suspended for those professionals and personnel from other states and nations offering medical services to those needing medical services as a result of this disaster provided that said out-of-state or out-of-country medical professional and personnel possess a current medical license in good standing in their respective state or country of licensure and that they practice in good faith, and within the reasonable scope of his or her skills, training, or ability;

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

SECTION 1: Pursuant to Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:724, et seq., and more specifically R.S. 29:766, a state of public health emergency is hereby declared.

SECTION 2: The Louisiana State licensure laws, rules, and regulations for medical professionals and personnel are hereby suspended for those medical professionals and personnel from other states or other countries offering medical services in Louisiana to those needing medical services as a result of this disaster provided that said out-of-state or out-of-country medical professionals and personnel possess a current medical license in good standing in their respective state or country of licensure and that they practice in good faith and within the reasonable scope of his or her skills, training, or ability.

SECTION 3: All out-of-state or out-of-country medical professionals and personnel offering services to the state of Louisiana by authority of this Order shall be covered by R.S. 40:1299.39, et seq., and shall thus be considered agents of the state of Louisiana for tort liability purposes contingent upon said out-of-state or out-of-country medical professional and personnel possessing a current medical license in good standing in their respective state or country of licensure and that they practice in good faith and within the reasonable scope of his or her skills, training or ability.

SECTION 4: All out-of-state or out-of-country medical professionals and personnel offering services to the state of Louisiana by authority of this Order shall submit to the state health officer, or his designee at the Office of Public Health within the Louisiana Department of Health and Hospitals, a copy of their respective license and photo identification. Such persons shall contact the Public Health Office at 225-763-5762 or 225-763-5763.

SECTION 5: Executive Order No. KBB 2005-26, issued on September 2, 2005, is hereby rescinded and terminated.

SECTION 6: This Order is effective upon signature and shall apply retroactively from September 2, 2005, through Sunday, September 25, 2005, until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 12th day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#066

EXECUTIVE ORDER KBB 05-34

Emergency Suspension of Certain
Unemployment Insurance Laws

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, subsequently, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state which has threatened the safety, health, and security of the citizens of the state of Louisiana, along with private property and public facilities;

WHEREAS, thereafter, a state of public health emergency was declared through Executive Order No. 26 KBB 2005;

WHEREAS, Hurricane Katrina and its aftermath has rendered approximately eight hundred thousand (800,000) workers and employers displaced from southeast Louisiana;

WHEREAS, in addition to the displaced individuals, there are thousands of individuals remaining in southeast Louisiana with which there has been numerous communication challenges due to the mass extended interruption of mail service, phone service and electricity;

WHEREAS, the evacuations, displacements, and communication issues as well as the inability of several employers to gain access to their personnel files has resulted in serious challenges to the administration of the unemployment insurance system, particularly to timely administer claims in a manner that is fair from both the benefit and tax perspective;

WHEREAS, the United State Department of Labor has worked with the Louisiana Department of Labor and has authorized flexibility on certain federal laws and regulations during this state of emergency so that unemployment insurance claims may be administered timely and fairly without raising federal conformity issues;

WHEREAS, R.S. 29:724 authorizes the governor, during a state of emergency, to suspend the provisions of any state regulatory statute prescribing procedures for conducting state business, or the orders, rules or regulation of any state agency, if strict compliance with the provision of any statute, order, rules or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency; and

WHEREAS, the secretary of the Department of Labor has requested, due to the extreme volume of claims to be processed, the suspension of R.S. 23:1553, 1541, 1600(2) and (3), and 1601(1), (2), and (7), so as to allow the timely and fair administration of the unemployment insurance program in accordance with his discussion with the United States Department of Labor;

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

SECTION 1: The following statutes relative to unemployment insurance are hereby suspended during the state of emergency until Sunday, September 25, 2005, unless extended by subsequent Executive Order:

A. R.S. 23:1541 and 1553 which provide for a claimant benefits to be charged against a base period employer for purposes of that employer's tax experience rating and the protesting of such charges by employer. All such benefit charges shall be against the social charge tax rate and not against a specific employer.

B. R.S. 1600(2) and (3) which require that claimants register for work and conduct work search activities. Work registration and search activities are not practical for claimants without fixed temporary or permanent housing and verification of such activities is not practical in the many areas that continue to have communication challenges. Claimants otherwise eligible, shall be eligible notwithstanding the requirement to register for work and to conduct a work search.

C. R.S. 23:1601(1), (2) and (7) which provide certain disqualifications for otherwise eligible claimants. Such disqualification include reasons for separation, including a substantial change in employment by the employer or misconduct connected with employment by the employee and offsets for receipt of other benefits. Many separations are the direct result of the damage and destruction from Hurricane Katrina and its aftermath and not the fault of either the employer or the claimant. Also, calculation of offsets for benefits would unduly delay payment, given the volume of claims and the volume of employers without access to their personnel files. Eligible claimants shall not be disqualified based on the above identified Paragraphs.

SECTION 2: This Order is effective upon signature and shall apply retroactively from Monday, August 29, 2005, through Sunday, September 25, 2005, unless amended, modified, terminated, or rescinded by the governor, or terminated by operation of law prior to Sunday, September 25, 2005.

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 12th day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#067

EXECUTIVE ORDER KBB 05-35

Emergency Suspension of In-State
Licensure for Veterinarians

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 48 KBB 2005;

WHEREAS, pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760, et seq., a state of public health emergency was declared through Executive Order No. 26 KBB 2005;

WHEREAS, Hurricane Katrina struck the state of Louisiana causing severe flooding and damage to the southeastern part of the state which has threatened the safety, health, and security of the citizens of the state of Louisiana, along with livestock and other animals, private property and public facilities;

WHEREAS, shortly thereafter, levees broke in the parish of Orleans, exacerbating the flooding and posing further threats to the safety, health, and security of the citizens of Louisiana, livestock, private property and public facilities;

WHEREAS, scores of animals have been rescued and many animals have suffered or will suffer injury, illness and/or death and are in need of veterinary services;

WHEREAS, many citizens, as well as those involved in the rescue effort, may have additional suffering caused by disease and/or illness associated with the animals in need of veterinary services;

WHEREAS, the number of veterinarians currently available to the state to respond to this emergency is insufficient and there is a need to immediately supplement their number in order to serve animals affected by this disaster, more particularly at the animal rescue shelters;

WHEREAS, R.S. 29:724 and 766 authorize the governor, during a declared state of emergency, to suspend the provisions of any regulatory statute prescribing procedures for conducting state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency; and

WHEREAS, the Louisiana Board of Veterinary Medicine and the state veterinarian have requested that the Louisiana state licensure laws, rules, and regulations for veterinarians relative to the requirement of possessing a Louisiana license to practice veterinary medicine be suspended for those veterinarians from other states offering

veterinary services to those animals needing such services as a result of this disaster provided that said out-of-state veterinarian possesses a current veterinary license in good standing in his or her respective state of licensure and that he or she practices in good faith and within the reasonable scope of his or her skills, training, or ability;

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

SECTION 1: The Louisiana State licensure laws, rules, and regulations for veterinarians relative to the requirement of possessing a Louisiana license to practice veterinary medicine are hereby suspended for out-of-state veterinarians who provide veterinary services in Louisiana to those needing such services as a result of this disaster provided that such out-of-state veterinarian possesses a current veterinary license in good standing in his or her respective state of licensure and that he or she practices in good faith and within the reasonable scope of his or her skills, training, or ability.

SECTION 2: All out-of-state veterinarians offering services to the state of Louisiana by authority of this Order shall submit a copy of their respective license and photo identification, as well as other requested information, to the Louisiana Board of Veterinary Medicine at lbvm@eatel.net, 225-342-2176, or fax 225-342-2142, for registration with that agency.

SECTION 3: The suspension of these rules, regulations, and laws shall extend through Sunday, September 25, 2005.

SECTION 4: This Order is effective upon signature and shall apply from Friday, September 9, 2005 through Sunday, September 25, 2005, unless amended, modified, terminated, or rescinded by the governor, or terminated by operation of law prior to Sunday, September 25, 2005.

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 12th day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#068

EXECUTIVE ORDER KBB 05-36

Delay of the October 15, 2005, Primary Election
and the November 12, 2005, General and Proposition
Election in the Parishes of Jefferson and Orleans

WHEREAS, "in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to qualify or exercise their right to vote, to minimize to whatever degree possible a person's exposure to danger during declared states of emergency, and to protect the integrity of the electoral process," the Louisiana Legislature enacted R.S. 18:401.1 to provide "a procedure for the emergency suspension or delay and rescheduling of qualifying, absentee voting in person, and elections"; and

WHEREAS, on September 12, 2005, pursuant to the provisions of R.S. 18:401.1(B), the secretary of state certified to the governor that as a result of Hurricane Katrina a state of emergency exists in the parishes of Jefferson and Orleans and recommends that the primary election scheduled to be held on Saturday, October 15, 2005, and the general and proposition election scheduled to be held on Saturday, November 12, 2005, be delayed until such time as may be rescheduled in those parishes;

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

SECTION 1: Under the authority of R.S. 18:401.1(B) and based on the September 12, 2005, certification of the secretary of state that a state of emergency exists in the parishes of Jefferson and Orleans, and the recommendation that the primary and general election in Jefferson Parish be delayed, and the proposition election in the Orleans Parish be delayed, the primary election scheduled to be held on Saturday, October 15, 2005, and the general election in Jefferson Parish and the proposition election in Orleans Parish scheduled to be held on Saturday, November 12, 2005, are hereby delayed until such time as may be rescheduled.

SECTION 2: This Order is effective upon signature.

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 14th day of September, 2005.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0509#069

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of the Commissioner

Fluoroquinolones in Seafood
(LAC 7:XXXV.147)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rules governing the testing and sale of seafood in Louisiana. This Rule is being adopted in accordance with R.S. 3:2(A), 3:3(B), R.S. 3:4608 and the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act.

The commissioner has promulgated these rules and regulations to implement standards relating to Fluoroquinolones in seafood that are consistent with standards adopted by the United States Food and Drug Administration, (FDA), regarding Fluoroquinolones in foods. All seafood sold in Louisiana must meet the standards set out in these regulations prior to distribution and sale of seafood in Louisiana.

Fluoroquinolones is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only. The FDA banned the extra label use of Fluoroquinolones in food producing animals in 1997 after determining that such use presented a risk to the public health. That ban is still in effect, see (21 CFR 530.41). "Extralabel use" means "actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling," see 21 CFR 530.3(a).

Since, the FDA has not established a safe level, tolerance level or safe concentration for Fluoroquinolones there is a zero tolerance level for Fluoroquinolones. Therefore, foods in which Fluoroquinolones are found are adulterated foods under the United States and Louisiana Food, Drug, and Cosmetics Acts.

Fluoroquinolones have been known to cause hypersensitivity or allergic reactions, toxicity-related reactions, and to an increased prevalence of infections due to antibiotic-resistant microorganisms. Hypersensitivity reactions can include life-threatening anaphylaxis, as well as urticaria, dermatitis, vomiting, and diarrhea. There is a significant chance that these reactions may be attributed to other factors, thereby causing a misdiagnosis, and subsequent mistreatment of a person's medical condition.

Toxicity can affect multiple organ systems and include peripheral neuropathies, seizures, phototoxicity, tendon rupture, fatal drug interactions and arthropathies in children. Fluoroquinolones should not be taken by pregnant and lactating women due to concern over the potential effect on a developing fetus.

The sale in Louisiana of seafood adulterated with Fluoroquinolones will expose Louisiana's citizens, including unborn children and nursing infants, to Fluoroquinolones and to the potential risks cited above, thereby presenting an imminent peril to the public's health, safety and welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that these Emergency Rules are necessary to immediately implement testing of seafood for Fluoroquinolones, to provide for the sale of seafood and any products containing seafood that are not contaminated with Fluoroquinolones. This Rule becomes effective upon signature, August 12, 2005, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7
AGRICULTURE AND ANIMALS
Part XXXV. Agro-Consumer Services
Chapter 1. Weights and Measures
§147. Fluoroquinolones in Seafood Prohibited; Testing and Sale of

A. Definitions

Food Producing Animals both animals that are produced or used for food and animals that produce material used as food.

Geographic Area a country, province, state, or territory or definable geographic region.

Seafood any edible freshwater or saltwater fish or shellfish, whether whole, portioned, processed and any product containing Seafood.

B. No seafood may be held, offered or exposed for sale, or sold in Louisiana if such seafood contains Fluoroquinolones.

C. No seafood that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Fluoroquinolones is being used on or found in food producing animals or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No seafood from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Fluoroquinolones is being used on or found in food producing animals or in products from such animals, based upon information that would lead a reasonable person to believe that Fluoroquinolones is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Fluoroquinolones is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Seafood that comes from a geographic area declared by the commissioner to be a location where Fluoroquinolones is being used on, or is found in food

producing animals or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Each sample shall consist of a case per lot of seafood.

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. The laboratory shall randomly selects 12 filets of fish from the case, remove any skin, and cut each filet in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve. Thoroughly blend the halves of the filets to be tested.

b. For all other seafood take samples from 12 randomly selected areas of each case in an amount to equal approximately one pound. Remove any skin or shell and thoroughly blend the meat. After the sample is blended, split the sample in half, setting aside one-half for testing and reserving the other half in a freezer.

4. Sample Analysis

a. Remove for testing, approximately 2 grams from the portion of the sample being tested.

b. The sample is initially tested using liquid chromatography with florescent detection. Samples that test positive are to be retested for confirmation of the initial test result using liquid chromatography with electrospray mass spectroscopy.

c. The initial test shall conform to the test method authored by Roybal et al in the Journal of AOAC International, Volume 85, Number 6, 2002, page 1293, or current FDA methods. The confirmation testing shall conform to FDA LIB 4108 or current FDA methods.

d. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Fluoroquinolones is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Fluoroquinolones shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the seafood being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the seafood.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the seafood may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such seafood sent to each location in Louisiana or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring seafood that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such seafood in Louisiana shall be responsible for having such seafood sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any seafood if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the seafood will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the seafood retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the seafood are certified as being free of Fluoroquinolones.

I. The department may inspect, and take samples for testing, any seafood, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any seafood that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

K. The department may take physical possession and control of any seafood that violate the requirements of this Section if the commissioner finds that the seafood presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L.1. The commissioner declares that he has information that would lead a reasonable person to believe that

Fluoroquinolones is being used on or found in food producing animals or in products from such animals in the following geographic area(s):

a. the country of Vietnam.

2. all seafood harvested from or produced, processed or packed in any of the above listed geographic areas is hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of seafood or any food containing seafood from the listed geographic areas shall be maintained for two years and shall be open to inspection by the department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R.S. 3:4624.

O. The effective date of this Section is August 12, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0509#001

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of the Commissioner

Chloramphenicol in Crabs and Crabmeat Testing and Sale
(LAC 7:XXXV.143 and 145)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rule governing the testing and sale of crab or crabmeat in Louisiana. This Rule is being adopted in accordance with R.S. 3:2(A), 3:3(B), R.S. 3:4608 and the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act.

The commissioner has promulgated these rules and regulations to implement standards relating to Chloramphenicol in crab or crabmeat that are consistent with standards adopted by the FDA regarding chloramphenicol in foods. All crab or crabmeat sold in Louisiana must meet the standards adopted by the commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, FDA, the states of Alabama and Louisiana have found Chloramphenicol in crab or crabmeat imported from other countries. The department has found chloramphenicol in crab or crabmeat imported from Vietnam, Thailand and China. The possibility exists that other countries may export Chloramphenicol-contaminated crab or crabmeat to the U.S.A.

The sale of such imported crab or crabmeat in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of crab or crabmeat containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying crab or crabmeat from any source, including Louisiana. If consumers cease to buy, or substantially reduce, their purchases of Louisiana crab or crabmeat then Louisiana's crab industry will be faced with substantial economic losses. Any economic losses suffered by Louisiana's crab industry will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to immediately implement testing of crab or crabmeat for Chloramphenicol, to provide for the sale of crab or crabmeat and any products containing crab or crabmeat that are not contaminated with Chloramphenicol. This Rule becomes effective upon signature, September 9, 2005, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7
AGRICULTURE AND ANIMALS
Part XXXV. Agro-Consumer Services
Chapter 1. Weights and Measures
§143. Chloramphenicol in Crab and Crabmeat Prohibited; Testing and Sale of

A. Definitions

Crab any such animals, whether whole, portioned, processed, shelled, and any product containing any crab or crabmeat.

Food Producing Animals both animals that are produced or used for food and animals, such as seafood, that produce material used as food.

Geographic Area a country, province, state, or territory or definable geographic region.

Packaged Crab any crab or crabmeat, as defined herein, that is in a package, can, or other container, and which is intended to eventually be sold to the ultimate retail purchaser in the package, can or container.

B. No crab or crabmeat may be held, offered or exposed for sale, or sold in Louisiana if such crab or crabmeat contains Chloramphenicol.

C. No crab or crabmeat that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No crab or crabmeat from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Crab or crabmeat that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of crab or crabmeat that are in lots of 50 pounds or less.

ii. Four samples are to be taken of crab or crabmeat that are in lots of 51 to one hundred pounds.

iii. Twelve samples are to be taken of crab or crabmeat that are in lots of one hundred and one pounds up to fifty tons.

iv. Twelve samples for each 50 tons are to be taken of crab or crabmeat that are in lots of over 50 tons.

b. For packaged crab or crabmeat, each sample shall be at least six ounces, (170.1 grams), in size and shall be taken at random throughout each lot of crab or crabmeat. For all other crab or crabmeat, obtain approximately one pound, (454 grams), of crab or crabmeat per sample from randomly selected areas.

c. If the crab or crabmeat to be sampled consists of packages of crab or crabmeat grouped together, but labeled under two or more trade or brand names, then the crab or crabmeat packaged under each trade or brand name shall be sampled separately. If the crab or crabmeat to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

d. A composite of the samples shall not be made. Each sample shall be tested individually. Each sample shall be clearly identifiable as belonging to a specific group of crab or crabmeat. All samples shall be kept frozen and delivered to the lab.

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation. For small packages of crab or crabmeat up to and including one pound, use the entire sample. Shell the crabs, exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the crab or crabmeat being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a

person who may be contacted at the laboratory regarding the testing of the crab or crabmeat.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the crab or crabmeat may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such crab or crabmeat sent to each location in Louisiana or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring crab or crabmeat that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such crab or crabmeat in Louisiana shall be responsible for having such crab or crabmeat sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any crab or crabmeat if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the crab or crabmeat will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the crab or crabmeat retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the crab or crabmeat are certified as being free of Chloramphenicol.

I. The department may inspect, and take samples for testing, any crab or crabmeat, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any crab or crabmeat that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

K. The department may take physical possession and control of any crab or crabmeat that violate the requirements of this Section if the commissioner finds that the crab or crabmeat presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L.1. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in the following geographic area(s):

a. the countries of Vietnam, Thailand, Mexico, Malaysia and China.

2. All crab and crabmeat harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of crabs or crabmeat or any food containing crab or crabmeat shall be maintained for two years and shall be open to inspection by the department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

O. The effective date of this Section is March 14, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 31:

§145. Labeling of Foreign Crab and Crabmeat by Country of Origin

A. Definitions

Crab or Crabmeat any crab or crabmeat, whether whole, portioned, processed or shelled and any product containing any crab or crabmeat.

Foreign Crab or Crabmeat any crab or crabmeat, as defined herein that is harvested from or produced, processed or packed in a country other than the United States.

B. All foreign crab or crabmeat, imported, shipped or brought into Louisiana shall indicate the country of origin, except as otherwise provided in this Section.

C. Every package or container that contains foreign crab or crabmeat, shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the crab or crabmeat with the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such crab or crabmeat are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

D. When foreign crab or crabmeat are combined with domestic crab or crabmeat, or products made from or containing domestic crab or crabmeat, the marking or label on the container or package or the sign included with any display shall clearly show the country of origin of the foreign crab or crabmeat.

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign crab or crabmeat, or any sign advertising such foreign crab or crabmeat for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin of the crab or

crabmeat, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign. The wording indicating that the crab or crabmeat is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the crab or crabmeat is a product of the United States in a legible, indelible and permanent manner. No provision of this Section is intended to or is to be construed as authorizing the use of the words "United States," "American," or the letters "U.S.A.," or any variation of such words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

F. Foreign crab or crabmeat shall not have to be marked or labeled with the country of origin if such crab or crabmeat is included as components in a product manufactured in the United States and the crab or crabmeat is substantially transformed in the manufacturing of the final product. But in no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, portioning, shelling, processing, peeling, partially cooking or combining with domestic crab or crabmeat shall not be considered to be a substantial transformation.

G. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of crab or crabmeat mislabeled or misbranded as to the country of origin.

H. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0509#018

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of the Commissioner

Chloramphenicol in Honey Testing and Sale
(LAC 7:XXXV.141)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rule governing the testing and sale of honey in Louisiana. This Rule is being adopted in accordance with R.S. 3:2(A), 3:3(B), R.S. 3:4608 and the emergency rule provisions of R.S. 49:953(B) of the Administrative Procedure Act.

The commissioner has promulgated these rules and regulations to implement standards relating to Chloramphenicol in honey that are consistent with standards adopted by the FDA regarding chloramphenicol in foods. All honey sold in Louisiana must meet the standards adopted by the commissioner, herein, prior to distribution and sale.

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, including bees (21 CFR 530.41).

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, Canada, the United Kingdom, the European Union, and Japan have found Chloramphenicol in honey imported from China. The department has found Chloramphenicol in honey imported from Thailand. Preliminary test results from Canada indicate about 80 percent of the samples are positive for Chloramphenicol. The possibility exists that other countries may export chloramphenicol-contaminated honey to the U.S.A., either by diversion of Chinese honey or their own use of chloramphenicol.

The sale of such honey in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of honey containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare. This peril can cause consumers to quit buying honey from any source, including Louisiana honey. If consumers cease to buy, or substantially reduce, their purchases of Louisiana honey then Louisiana honey producers will be faced with substantial economic losses. Any economic losses suffered by Louisiana's honey producers will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to immediately implement testing of honey for Chloramphenicol, to provide for the sale of honey and products containing honey that are not contaminated with Chloramphenicol. This Rule becomes effective upon signature, September 9, 2005, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7
AGRICULTURE AND ANIMALS
Part XXXV. Agro-Consumer Services
Chapter 1. Weights and Measures
§141. Chloramphenicol in Honey Prohibited; Testing and Sale of

A. Definitions.

Food Producing Animals both animals that are produced or used for food and animals, including bees, which produce material used as food.

Geographic Area a country, province, state, or territory or definable geographic region.

Honey any honey, whether raw or processed.

B. No honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana if such honey or food containing honey contains Chloramphenicol.

C. No honey that is harvested from or produced, processed or packed in a geographic area, that the Commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals, including bees, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No honey from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, including bees or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals, including bees, in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Honey that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, including bees, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana:

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of honey that is in lots of 50 pounds or less.

ii. Four samples are to be taken of honey that is in lots of 51 to 100 pounds.

iii. Twelve samples are to be taken of honey that is in lots of 101 pounds up to 50 tons.

b. For honey in bulk wholesale containers, each sample shall be at least one pound or twelve fluid ounces and must be pulled at random throughout each lot.

c. For packaged honey, each sample shall be at least eight ounces in size and shall be taken at random throughout each lot.

d. If the honey to be sampled consists of packages of honey grouped together, but labeled under two or more trade or brand names, then the honey packaged under each trade or brand name shall be sampled separately. If the honey to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

e. A composite of the samples shall not be made. All samples shall be delivered to the lab. Each sample shall be clearly identifiable as belonging to a specific group of honey and shall be tested individually.

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation. For small packages of honey up to and including eight ounces, use the entire sample. If honey sample includes more than one container, they shall be blended together. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results above 1 ppb must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless it is located in a geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the honey or food containing honey being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the honey.

8. Upon the department's actual receipt of a copy of the certified test results and written documentation required to accompany the certified test results, the honey or food containing honey may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment of such honey or food containing honey, and be attached to the documentation submitted with every shipment sent to each location in Louisiana, or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring honey, or any food containing honey, that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such honey or food containing honey in Louisiana shall be responsible for having the honey, sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any honey if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. If any certified test results are rejected by the commissioner then any person shipping or holding the honey or food containing honey will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, any such person shall abide by such order until the commissioner lifts the order in writing. Any such person may have the honey retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the honey is certified as being free of Chloramphenicol.

I. The department may inspect any honey and any food containing honey, found in Louisiana, and take samples for testing.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any honey or any food containing honey that does not meet the requirements of this Section. Any such order shall remain in place until lifted, in writing, by the commissioner.

K. The department may take physical possession and control of any honey or any food containing honey that violate the requirements of this Section if the commissioner finds that the honey or food containing honey presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

L.1. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals including bees, or in products from such animals, in certain geographic area(s):

a. the country of the People's Republic of China;

b. the country of Thailand.

2. All honey harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

M. All records and information regarding the distribution, purchase and sale of honey or any food containing honey shall be maintained for two years and shall be open to inspection by the department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0509#020

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of the Commissioner

Chloramphenicol in Shrimp and Crawfish Testing, Sale, and Labeling (LAC 7:XXXV.137 and 139)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rule governing the testing and sale of shrimp and crawfish in Louisiana and the labeling of foreign shrimp and crawfish. This Rule is being adopted in accordance with R.S. 3:2(A), 3:3(B), R.S. 3:4608 and the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act.

The Louisiana Legislature, by SCR 13 of the 2002 Regular Session, has urged and requested that the Commissioner of Agriculture and Forestry require all shrimp and crawfish, prior to sale in Louisiana, meet standards relating to Chloramphenicol that are consistent with those standards promulgated by the United States Food and Drug Administration, (FDA). The Legislature has also urged and requested the commissioner to promulgate rules and regulations necessary to implement the standards relating to Chloramphenicol in shrimp and crawfish that are consistent with those standards promulgated by the FDA, and which rules and regulations require all shrimp and crawfish sold in

Louisiana to meet the standards adopted by the commissioner, prior to sale.

Chloramphenicol is an antibiotic the FDA has restricted for use in humans only in those cases where other antibiotics or medicines have not been successful. The FDA has banned the use of Chloramphenicol in animals raised for food production. See, 21 CFR 522.390(3). The FDA has set a zero tolerance level for Chloramphenicol in food.

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

Recently, European Union inspectors found chloramphenicol residues in shrimp and crawfish harvested from and produced in China. The inspectors also found "serious deficiencies of the Chinese residue control system and problems related to the use of banned substances in the veterinary field," which may contribute to Chloramphenicol residues in Chinese shrimp and crawfish. The Chinese are known to use antibiotics, such as Chloramphenicol, in farm-raised shrimp. They are also known to process crawfish and shrimp harvested in the wild in the same plants used to process farm-raised shrimp.

The European Union, in January of this year, banned the import of shrimp and crawfish from China because Chloramphenicol has been found in shrimp and crawfish imported from China. Canada has, this year, banned the import of shrimp and crawfish that contain levels of chloramphenicol above the level established by Canada. Between 1999 and 2000 imports of Chinese Shrimp to the United States doubled, from 19,502,000 pounds to 40,130,000 pounds. With the recent bans imposed by the European Union and Canada there is an imminent danger that the shrimp and crawfish that China would normally export to the European Union and Canada will be dumped and sold in the United States, including Louisiana.

The sale of such shrimp and crawfish in Louisiana will expose Louisiana's citizens, including unborn children and nursing infants, to Chloramphenicol, a known health hazard. The sale, in Louisiana, of shrimp and crawfish containing Chloramphenicol presents an imminent peril to the public's health, safety and welfare.

This peril can cause consumers to quit buying shrimp and crawfish from any source, including Louisiana shrimp and crawfish. If consumers cease to buy, or substantially reduce, their purchases of Louisiana shrimp and seafood, Louisiana aquaculture and fisheries will be faced with substantial economic losses. Any economic losses suffered by Louisiana's aquaculture and fisheries will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

Consumers of shrimp and crawfish cannot make an informed decision as to what shrimp or crawfish to purchase and the commissioner cannot adequately enforce the regulations regarding the sampling and testing of shrimp and crawfish unless shrimp and crawfish produced in foreign countries are properly labeled as to the country of origin.

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to immediately implement testing of shrimp and crawfish for Chloramphenicol, to provide for the sale of shrimp and crawfish that are not contaminated with Chloramphenicol and to provide for the labeling of shrimp and crawfish harvested from or produced, processed or packed in countries other than the United States. This Rule becomes effective upon signature, September 9, 2005, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§137. Chloramphenicol in Shrimp and Crawfish Prohibited; Testing and Sale of

A. Definitions.

Food Producing Animals both animals that are produced or used for food and animals, such as dairy cows, that produce material used as food.

Geographic Area a country, province, state, or territory or definablegeographic region.

Packaged Shrimp or Crawfish any shrimp or crawfish, as defined herein, that is in a package, can, or other container, and which is intended to eventually be sold to the ultimate retail purchaser in the package, can or container.

Shrimp or Crawfish any such animals, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana if such shrimp or crawfish contain Chloramphenicol.

C. No shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana without being accompanied by the following records and information, written in English.

1. The records and information required are:

a. the quantity and species of shrimp and crawfish acquired or sold;

b. the date the shrimp or crawfish was acquired or sold;

c. the name and license number of the wholesale/retail seafood dealer or the out-of-state seller from whom the shrimp or crawfish was acquired or sold;

d. the geographic area where the shrimp or crawfish was harvested;

e. the geographic area where the shrimp or crawfish was produced processed or packed;

f. the trade or brand name under which the shrimp or crawfish is held;

g. offered or exposed for sale or sold; and

h. the size of the packaging of the packaged shrimp or crawfish.

2. Any person maintaining records and information as required to be kept by the Louisiana Department of Wildlife and Fisheries in accordance with R.S. 56:306.5, may submit a copy of those records, along with any additional information requested herein, with the shrimp or crawfish.

3. Any shrimp or crawfish not accompanied by all of this information shall be subject to the issuance of a stop-sale, hold or removal order until the shrimp or crawfish is tested for and shown to be clear of Chloramphenicol, or the commissioner determines that the shrimp or crawfish does not come from a geographic area where Chloramphenicol is being used on or found in food producing animals, or in products from such animals.

D. No shrimp or crawfish that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection F.

E. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

F. Shrimp or crawfish, that comes from a geographic area declared by the commissioner to be a location where Chloramphenicol is being used on, or is found in food producing animals, or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of shrimp or crawfish that are in lots of 50 pounds or less.

ii. Four samples are to be taken of shrimp or crawfish that are in lots of 51 to one hundred pounds.

iii. Twelve samples are to be taken of shrimp or crawfish that are in lots of 101 pounds up to 50 tons.

iv. Twelve samples for each 50 tons are to be taken of shrimp or crawfish that are in lots of over 50 tons.

b. For packaged shrimp or crawfish, each sample shall be at least eight ounces, (226.79 grams), in size and shall be taken at random throughout each lot of shrimp or crawfish. For all other shrimp or crawfish, obtain approximately one pound, (454 grams), of shrimp or crawfish per sample from randomly selected areas.

c. If the shrimp or crawfish to be sampled consists of packages of shrimp or crawfish grouped together, but labeled under two or more trade or brand names, then the shrimp or crawfish packaged under each trade or brand name shall be sampled separately. If the shrimp or crawfish to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

d. A composite of the samples shall not be made. Each sample shall be tested individually. Each sample shall be clearly identifiable as belonging to a specific group of shrimp or crawfish. All samples shall be kept frozen and delivered to the lab.

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation. For small packages of shrimp or crawfish up to and including one pound, use the entire sample. Shell the shrimp or crawfish, exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per billion, (1 ppb) or less. Acceptable test kits include r-iopharm Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The Manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

c. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Chloramphenicol is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Chloramphenicol shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the shrimp or crawfish being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the shrimp or crawfish.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the shrimp or crawfish may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such shrimp or crawfish sent to each location in Louisiana or shall be immediately accessible to the department, upon request, from any such location.

G. Any person who is seeking to bring shrimp or crawfish that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such shrimp or crawfish in Louisiana shall be responsible for having such shrimp or crawfish sampled and tested in accordance with Subsection F. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

H. The commissioner may reject the test results for any shrimp or crawfish if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

I. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the shrimp or crawfish will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the shrimp or crawfish retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the shrimp or crawfish are certified as being free of Chloramphenicol.

J. The department may inspect, and take samples for testing, any shrimp or crawfish, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

K. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any shrimp or crawfish that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

L. The department may take physical possession and control of any shrimp or crawfish that violate the requirements of this Section if the commissioner finds that the shrimp or crawfish presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

M.1. The commissioner declares that he has information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in the following geographic area(s):

a. the country of the People's Republic of China.

2. All shrimp and crawfish harvested from or produced, processed or packed in any of the above listed geographic areas are hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

N. The records and information required under this Section shall be maintained for two years and shall be open to inspection by the Department.

O. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 31:

§139. Labeling of Foreign Shrimp and Crawfish by Country of Origin

A. Definitions

Foreign Shrimp or Crawfish any shrimp or crawfish, as defined herein that is harvested from or produced, processed or packed in a country other than the United States.

Shrimp or Crawfish any shrimp or crawfish, whether whole, de-headed, de-veined or peeled, and any product containing any shrimp or crawfish.

B. All foreign shrimp or crawfish, imported, shipped or brought into Louisiana shall indicate the country of origin, except as otherwise provided in this Section.

C. Every package or container that contains foreign shrimp or crawfish, shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the shrimp or crawfish the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such shrimp or crawfish are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

D. When foreign shrimp or crawfish are combined with domestic shrimp or crawfish, or products made from or containing domestic shrimp or crawfish, the marking or label on the container or package or the sign included with any

display shall clearly show the country of origin of the foreign shrimp or crawfish.

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign shrimp or crawfish, or any sign advertising such foreign shrimp or crawfish for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin of the shrimp or crawfish, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign. The wording indicating that the shrimp or crawfish is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the shrimp or crawfish is a product of the United States in a legible, indelible and permanent manner. No provision of this Section is intended to or is to be construed as authorizing the use of the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

F. Foreign shrimp or crawfish shall not have to be marked or labeled with the country of origin if such shrimp or crawfish are included as components in a product manufactured in the United States and the shrimp or crawfish is substantially transformed in the manufacturing of the final product. But in no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, de-heading, de-veining, peeling, partially cooking or combining with domestic shrimp or crawfish shall not be considered to be a substantial transformation.

G. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of shrimp or crawfish mislabeled or misbranded as to the country of origin.

H. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 31:

Bob Odom
Commissioner

0509#019

DECLARATION OF EMERGENCY

Student Financial Assistance Commission
Office of Student Finanical Assistance

Scholarship/Grant Programs Maintaining Eligibility
(LAC 28:IV.705 and 805)

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 repromulgate the rules of the Scholarship/Grant Programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)].

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 resulting in students being unable to attend college and thereby depriving these students of a postsecondary education and weakening the state's workforce. LASFAC has determined that these Emergency Rules are necessary to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective August 11, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0664E)

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards
§705. Maintaining Eligibility

A. - A.8.d. …

9. through the 2003-2004 Academic Year (College), has not been enrolled in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree for more than two years.

B. - D. …

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 22:338 (May 1996), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996 (September 2000), LR 26:2001 (September 2000), repromulgated LR 27:1853 (November 2001), amended LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1163 (June 2004), LR 30:2019 (September 2004), LR 31:

Chapter 8. TOPS-TECH Award
§805. Maintaining Eligibility

A. - A.5. …

6. has maintained Steady Academic Progress as defined in §301; and

7. maintain, by the end of the spring term, a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale; and

8. earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or term in the Program Year (Non-Academic Program). Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility.

B. - C. …

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) amended LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997 (September 2000), LR 26:2002 (September 2000), repromulgated LR 27:1856 (November 2001), amended LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:880 (June 2003), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1165 (June 2004), LR 30:2019 (September 2004), LR 31:

George Badge Eldredge
General Counsel

0509#003

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

New or Revised Emissions Estimation Methods
(LAC 33:III.501)(AQ240E3)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby declares that an emergency action is necessary to implement rules concerning the use of new or revised emissions estimation methods for annual compliance certifications required by LAC 33:III.507.H.

This is a renewal of Emergency Rule AQ240E2, which was effective on April 27, 2005, and published in the *Louisiana Register* on May 20, 2005. The department is drafting a rule to promulgate these regulation changes. This Emergency Rule clarifies requirements set forth in LAC 33:III.919, concerning emissions inventory, and LAC 33:III.507.H, concerning annual compliance certifications. LAC 33:III.919.C requires that emissions reported in the emissions inventory shall be calculated using the best available information.

The department realizes that the Clean Air Act (42 U.S.C. §7430) requires EPA to periodically review AP-42 factors and that such emission factors may change upwards or downwards due to receipt of improved data.

The failure to adopt this Rule on an emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare. The air regulations require that permittees use the latest version of any AP-42 factor used to calculate emissions reported on an annual emissions inventory. For some facilities, this will result in a change in the calculation of emissions from levels that were previously in compliance with permit limits to levels that exceed those permit limits. Those facilities that have been reporting emissions in compliance with their permits may now be reporting emissions that exceed permit limits, even though their actual emissions have not changed. As a result, these facilities face potential enforcement actions, including substantial civil penalties. Some such facilities may elect to reduce or cease operations, which would have severe economic consequences for the firms involved, as well as their employees, suppliers, and customers. Adding LAC 33:III.501.C.11 allows the department to review changes in emission factors on a case-by-case basis prior to any actions taken by the department.

This Emergency Rule is effective on August 25, 2005, 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 AQ240E3 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport LA 70374.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - C.10. ...

11. Emissions estimation methods set forth in the Compilation of Air Pollution Emission Factors (AP-42) and other department-approved estimation methods may be promulgated or revised. Emissions increases due solely to a change in AP-42 factors do not constitute violations of the air permit. Changes in emission factors other than AP-42 factors will be evaluated by the department on a case-by-case basis for appropriate action.

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

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

Mike D. McDaniel, Ph.D.
Secretary

0509#005

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Sewage Sludge Regulatory Management
(LAC 33:VII.301 and 303, and IX:6901, 6903, 6905, 6907, 6909, 6911, and 7135)(OS066E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074,

which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to prevent the unauthorized disposal of sewage sludge in treatment works treating domestic sewage and other areas unprepared to receive the waste stream.

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

This Emergency Rule is effective on September 1, 2005, 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 OS066E you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 1. Solid Waste Regulations
Chapter 3. Scope and Mandatory Provisions of the Program
§301. Wastes Governed by these Regulations

All solid wastes as defined by the act and these regulations are subject to the provisions of these regulations, except as follows:

A. - A.8. …

9. sewage sludge (including domestic septage) that is generated, treated, processed, composted, blended, mixed, prepared, transported, used, or disposed of in accordance with LAC 33:IX.Chapter 69. Provisions addressing sewage sludge and domestic septage found throughout these regulations will no longer apply.

B. - B.6. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

§303. Wastes Not Subject to the Permitting Requirements or Processing or Disposal Standards of these Regulations

The following solid wastes, when processed or disposed of in an environmentally sound manner, are not subject to the permitting requirements or processing or disposal standards of these regulations:

A. - J.2. …

K. solid wastes re-used in a manner protective of human health and the environment, as demonstrated by a soil re-use plan prepared in accordance with LAC 33:I.Chapter 13 and approved by the administrative authority;

L. other wastes deemed acceptable by the administrative authority based on possible environmental impact; and

M. mixtures of solid wastes and sewage sludge, when such mixtures meet the requirements of LAC 33:IX.Chapter 69.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

Part IX. Water Quality
Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program
Chapter 69. Standards for the Use or Disposal of Sewage Sludge
§6901. General Provisions

A. Purpose and Applicability

1. Purpose

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

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

c. This Chapter establishes requirements for the person who prepares sewage sludge, including dewatering

and solidification, that is disposed in a Municipal Solid Waste Landfill.

d. …

2. Applicability

a. This Chapter applies to:

i. any person who prepares sewage sludge or a material derived from sewage sludge, including the dewatering and solidification of sewage sludge;

ii. any person who applies sewage sludge or a material derived from sewage sludge to the land;

iii. any person who prepares sewage sludge, including dewatering and solidification, that is disposed in a Municipal Solid Waste Landfill;

iv. the owner/operator of a surface disposal site;

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

vi. the transporter of sewage sludge and the vehicle being utilized to transport the sewage sludge.

b. This Chapter applies to sewage sludge and a material derived from sewage sludge that is applied to the land or placed on a surface disposal site, to the land where the sewage sludge or a material derived from sewage sludge is applied, and to a surface disposal site.

c. …

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

B. Compliance Period

1. - 3.a. …

b. Compliance with the requirements in Paragraphs F.2, 3, and 4 of this Section shall be achieved as expeditiously as practicable, but in no case later than two years from the effective date of these regulations ([date of promulgation to be inserted]).

c. Upon the effective date of these regulations ([date of promulgation to be inserted]), those persons who have been:

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

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

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

d. Those persons who are allowed to continue operation for a 5-year period under a standard solid waste permit under LAC 33:Part VII as allowed under Clause B.3.c.ii of this Section and who have not been reissued a permit under these regulations by the administrative authority shall submit to the administrative authority an application for permit issuance under these regulations at least 180 days prior to expiration of the 5-year period, if they intend to continue operations after that date.

e. Operation under the standard solid waste permit issued under LAC 33:Part VII may be reduced to a period of less than the five years allowed in Clause B.3.c.ii of this Section if deemed necessary by the administrative authority for the protection of human health and/or the environment.

f. Upon assumption of a sewage sludge management program from the Environmental Protection Agency, those persons who:

i. are presently operating under a permit issued under these regulations may continue operation under the issued permit if they intend to continue operation after assumption of the sewage sludge management program;

ii. do not have a permit issued under these regulations shall have a period of no greater than 180 days after assumption of the sewage sludge management program to submit an application for permit coverage under these regulations.

C. Permits and Permitting Requirements

1.a. Except as exempted in Paragraph C.2 of this Section, no person shall prepare sewage sludge or a material derived from sewage sludge, apply sewage sludge or a material derived from sewage sludge to the land, or own or operate a sewage sludge incinerator without first obtaining a permit that authorizes such practice in accordance with the applicable requirements of this Chapter and LAC 33:III.Chapter 5, in the case of sewage sludge incinerators.

b. The person who prepares sewage sludge or a material derived from sewage sludge and the person who applies sewage sludge or a material derived from sewage sludge to the land shall use the application forms indicated in LAC 33:IX.2501.A.2 and furnish the information requested in LAC 33:IX.2501.Q.

c. …

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

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

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

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

b. Upon certification, the person who prepares sewage sludge; the person who applies sewage sludge to the land; the commercial blender, composter, mixer, preparer, or land applier of sewage sludge; and the owner and/or operator of a sewage sludge incinerator shall provide proof to the administrative authority of continued training of at least eight continuing education units on an annual basis in the form of classes, seminars, conferences, or conventions approved by the administrative authority.

4. The person who transports sewage sludge shall only transport the sewage sludge to a facility that is permitted to either treat, process, incinerate, or dispose of the sewage sludge or to a site that is permitted for the land application of treated sewage sludge.

5. A transporter of sewage sludge shall notify the Office of Environmental Services, Water and Waste Permits Division, prior to engaging in such activities, utilizing a form that is obtained from the Office of Environmental Services, Water and Waste Permits Division.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. - 2. …

3.a. The person who produces sewage sludge that is disposed in a Municipal Solid Waste Landfill shall provide proof to the administrative authority that the sewage sludge is being disposed at an approved landfill by furnishing the name, address, and permit number of the landfill to the administrative authority.

b. The person who produces sewage sludge shall provide to the administrative authority copies of all sampling and laboratory analyses of the sewage sludge that are required by the owner/operator of the Municipal Solid Waste Landfill where the sewage sludge is disposed.

E. Standards for Vehicles of Transporters of Sewage Sludge

1. The types and sizes of vehicles shall comply with the regulations and licensing of the Department of Transportation and Development and with applicable local ordinances governing weight and size for the roads and streets that must be traveled during the transporting of sewage sludge.

2. The bodies of vehicles must be covered at all times, except during loading and unloading, in a manner that prevents rain from reaching the sewage sludge, inhibits access by vectors, prevents the sewage sludge from falling or blowing from the vehicle, minimizes escape of odors, and does not create a nuisance.

3. The bodies of vehicles that are utilized to transport liquefied sewage sludge or a sewage sludge that is capable of producing a leachate shall be constructed and/or enclosed with an appropriate material that will completely prevent the leakage or spillage of the liquid.

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

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

b. No person shall use or dispose of sewage sludge or a material derived from sewage sludge except in accordance with the requirements in this Chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

permits have been applied for and granted by the administrative authority.

b. The person who makes use of a pond or lagoon to treat sewage sludge shall provide documentation to the administrative authority that indicates the final use or disposal method for the sewage sludge and shall apply for the appropriate permit for the chosen final use or disposal in accordance with this Chapter.

c. The person who makes use of a pond or lagoon to treat sewage sludge shall provide documentation by a qualified groundwater scientist to the administrative authority that indicates that the area where the pond or lagoon is located will adequately protect against potential groundwater contamination either by natural soil or by a synthetic liner that has a hydraulic conductivity of $1x10^{-7}$ centimeters per second or less.

5. Materials Prohibited from Feedstock or Supplements that are Blended, Composted, or Mixed with Sewage Sludge

a.i. The person who generates, transports, or treats sewage sludge shall not blend, compost, or mix hazardous waste with sewage sludge.

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

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

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

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

Table 1 of LAC 33:IX.6901.F
Materials Prohibited from Feedstock or Supplements that are Blended, Composted, or Mixed with Sewage Sludge
Antifreeze
Automotive (lead-acid) batteries
Brake fluid
Cleaners (drain, oven, toilet)
Gasoline and gasoline cans
Herbicides
Household (dry cell) batteries
Oil based paint
Pesticides
Photographic supplies
Propane cylinders
Treated wood containing the preservatives CCA and/or PCP
Tubes and buckets of adhesives, caulking, etc.
Swimming pool chemicals
Unmarked containers
Used motor oil

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

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

7.a. The use of raw or untreated sewage sludge, or treated sewage sludge that does not meet the requirements for *Exceptional Quality* as defined in Subsection I of this Section, for daily cover at a Municipal Solid Waste Landfill is prohibited.

b. The use of sewage sludge as interim or final cover at a Municipal Solid Waste Landfill is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.6903.

8. No person shall introduce sewage sludge that is blended or mixed with *grease*, as defined in Subsection I of this Section, that was pumped or collected from a *food service facility*, as defined in Subsection I of this Section, into any part of a *treatment works,* as defined in Subsection I of this Section, including its collection system.

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

G. Exclusions

1. Treatment Processes. This Chapter does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in LAC 33:IX.6909.C and D.

2. Selection of a Use or Disposal Practice. This Chapter does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is to be made by the person who prepares the sewage sludge.

3. Co-Firing of Sewage Sludge

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

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

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

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

6. Sewage Sludge with High PCB Concentration. This Chapter does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

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

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

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

10. Commercial and Industrial Septage. This Chapter does not establish requirements for the use or disposal of commercial septage or industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage, excluding portable toilet waste.

H. Sampling and Analysis

1. Sampling

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

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

i. the date, exact place, and time of sampling or measurements;

ii. the individual(s) who performed the sampling or measurements;

iii. the date(s) analyses were performed;

iv. the individual(s) who performed the analysis;

v. the analytical techniques or methods used; and

vi. the results of such analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. any publicly owned treatment works (POTW) or privately owned wastewater treatment device or system, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. the person who prepares sewage sludge or a material derived from sewage sludge, including commercial blenders, composters, mixers, preparers, and land appliers;

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

d. the person who applies sewage sludge or a material derived from sewage sludge to the land.

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

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

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

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

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

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

Feed Crops crops produced primarily for consumption by animals.

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

Fiber Crops crops such as flax and cotton.

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

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

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

Groundwater water below the land surface in the saturated zone.

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

Industrial Wastewater wastewater generated in a commercial or industrial process.

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

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

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

Person Who Prepares Sewage Sludge either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, including by the dewatering and solidification of sewage sludge.

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

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

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

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

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

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

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

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

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

Transporter of Sewage Sludge any person who moves sewage sludge off-site or moves sewage sludge to a storage site, treatment or processing site, disposal site, or land application site.

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

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

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

§6903. Land Application

A. Applicability

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

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

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

b. …

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

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

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

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

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

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

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

2. General Management Practices

a. All Sewage Sludge or Material Derived from Sewage Sludge

i. …

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

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

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

(a). - (b). …

(c). established school, institution, business, or occupied residential structure—1000 feet, unless special permission is granted by a qualified representative of the established school, institution, business, or occupied residential structure; and

(d). …

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

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

b. - b.ii.(d). …

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

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

3. Repealed.

Equation (1). Repealed.

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

2. Vector Attraction Reduction Sewage Sludge

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

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

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

G. Frequency of Monitoring

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

Table 1 of LAC 33:IX.6903.G	
Frequency of Monitoring—Land Application	
Amount of Sewage Sludge1 (metric tons per 365-day period)	**Frequency**
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)
1Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).	

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

H. Recordkeeping

1. ...

2. Additional Recordkeeping

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

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

I. Reporting

1. …

2. Additional Reporting Requirements

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

b. All other Class I sludge management facilities, as defined in LAC 33:IX.2313, that apply bulk sewage sludge to the land and are required to obtain a permit under LAC 33:IX.6901.C, shall submit the information in Paragraph H.2 of this Section for the appropriate requirements, to the administrative authority as indicated in the following clauses.

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

ii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX6903.G of once per quarter (four times per year), the reporting period and the report due date shall be as specified in Table 2 of LAC 33:IX.6903.I.

iii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX6903.G of once per 60 days (six times per year), the reporting period and the report due date shall be as specified in Table 3 of LAC 33:IX.6903.I.

iv. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX6903.G of once per month (12 times per year), the reporting period and the report due date shall be as specified in Table 4 of LAC 33:IX.6903.I.

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

Table 2 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period[1] (Once per Quarter)	**Report Due Date**
January, February, March	August 28
April, May, June	
July, August, September	February 28
October, November, December	
[1]Separate reports must be submitted for each monitoring period.	

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

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

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

J. Exceptional Quality Permit

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

i. - vi.(h). …

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

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

3.a. For the term of the Exceptional Quality Permit, the preparer of the sewage sludge or material derived from sewage sludge shall conduct continued sampling at the frequency of monitoring specified in Paragraph G.1 of this Section. The samples shall be analyzed for the parameters specified in Clauses J.1.a.i-iii of this Section, and for the pathogen and vector attraction reduction requirements in Clauses J.1.a.iv and v, as required by LAC 33:IX.6909.

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

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

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from

sewage sludge meets the criteria for *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

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

ii. the following certification statement:

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

§6905. Siting and Operation Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge

A. Siting

1. Location Characteristics

a. …

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

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

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

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

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

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

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

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

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

g. Facilities that blend, mix, or compost sewage sludge that include food or other municipal solid waste as feedstock or supplements shall not be located closer than:

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

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

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

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

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

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

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

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

2. Facility Characteristics

a. - b. …

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

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

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

A.3. - B.3.c.v. …

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

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

§6907. Financial Assurance Requirements for Commercial Blenders, Composters, Mixers, Preparers, or Land Appliers of Sewage Sludge

A. - A.2. ...

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

2.a.i. - 5.a.i. …

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

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

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

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

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

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

e. - i.i. …

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

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

8.i.iv. - 12.d. …

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

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

§6909. Pathogens and Vector Attraction Reduction

A. Scope. This Section contains the following:

1. ...

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

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

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

* * *

C. Pathogens

1. Sewage Sludge Exceptional Quality

a. - b. ...

c. Exceptional Quality Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage is used or disposed, at the time the sewage sludge is prepared for

sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

c.ii. - d. ...

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

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

e. Exceptional Quality Alternative 3

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

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

f. Exceptional Quality Alternative 4

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

ii. …

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

g. Exceptional Quality Alternative 5

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

ii. ...

h. Exceptional Quality Alternative 6

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

1.h.ii. - 2.e.v. …

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

vii. - viii. …

3. Repealed.

a. Repealed.

b. Repealed.

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

d. Repealed.

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

k. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

§6911. Incineration

A. - A.2. …

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

* * *

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

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

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

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "2540 G Total Fixed and Volatile Solids in Solid and Semisolid Samples" as referenced in LAC 33:IX.6901.H.2.g shall be used to

determine dry sewage sludge content of each sample (total solids residue), except that:

D.6.b.v.(a). - I.3.c. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

Chapter 71. Appendices

§7135. Appendix RCFinancial Assurances Documents

Document 1. Liability Endorsement

COMMERCIAL BLENDER, COMPOSTER, MIXER, PREPARER, OR LAND APPLIER OF SEWAGE SLUDGE

LIABILITY ENDORSEMENT

* * *

[See Prior Text in Liability Endorsement]

Document 2. Certificate of Insurance

COMMERCIAL BLENDER, COMPOSTER, MIXER, PREPARER, OR LAND APPLIER OF SEWAGE SLUDGE FACILITY

CERTIFICATE OF LIABILITY INSURANCE

* * *

[See Prior Text in Certificate of Liability Insurance]

Document 3. Letter of Credit

COMMERCIAL BLENDER, COMPOSTER, MIXER, PREPARER, OR LAND APPLIER OF SEWAGE SLUDGE FACILITY

IRREVOCABLE LETTER OF CREDIT

* * *

[See Prior Text in Irrevocable Letter of Credit]

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

* * *

[See Prior Text in Irrevocable Letter of Credit]

Document 4. Trust Agreement

COMMERCIAL BLENDER, COMPOSTER, MIXER, PREPARER, OR LAND APPLIER OF SEWAGE SLUDGE FACILITY

TRUST AGREEMENT/STANDBY

TRUST AGREEMENT

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

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

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

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

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

* * *

[See Prior Text in Trust Agreement]

Document 5. Surety Bond

COMMERCIAL BLENDER, COMPOSTER, MIXER, PREPARER, OR LAND APPLIER OF SEWAGE SLUDGE FACILITY

FINANCIAL GUARANTEE BOND

Date bond was executed: _____

Effective date: _____

Principal:

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

Type of organization:

[insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name and business address]

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

Total penal sum of bond: $ _____

Surety's bond number: _____

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

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

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

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

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

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

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

the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

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

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

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

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

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

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

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

* * *

[See Prior Text in Financial Guarantee Bond]

Document 6. Performance Bond

COMMERCIAL BLENDER, COMPOSTER,
MIXER, PREPARER, OR LAND APPLIER
OF SEWAGE SLUDGE FACILITY

PERFORMANCE BOND

Date bond was executed: _____

Effective date: _____

Principal:

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

Type of organization:

[insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

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

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

Total penal sum of bond: $ _____

Surety's bond number: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

[See Prior Text in Performance Bond]

Document 7. Letter of Credit

COMMERCIAL BLENDER, COMPOSTER,
MIXER, PREPARER, OR LAND APPLIER
OF SEWAGE SLUDGE FACILITY

IRREVOCABLE LETTER OF CREDIT

* * *

[See Prior Text in Irrevocable Letter of Credit]

Document 8. Certificate of Insurance

COMMERCIAL BLENDER, COMPOSTER,
MIXER, PREPARER, OR LAND APPLIER
OF SEWAGE SLUDGE FACILITY

CERTIFICATE OF INSURANCE FOR CLOSURE
AND/OR POST-CLOSURE CARE

* * *

[See Prior Text in Certificate of Insurance]

Document 9. Letter from the Chief Financial Officer

COMMERCIAL BLENDER, COMPOSTER,
MIXER, PREPARER, OR LAND APPLIER
OF SEWAGE SLUDGE FACILITY

LETTER FROM THE CHIEF FINANCIAL
OFFICER (LIABILITY COVERAGE, CLOSURE,
AND/OR POST-CLOSURE)

* * *

[See Prior Text in Letter]

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

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

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

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

* * *

[See Prior Text in Letter]

Document 10. Corporate Guarantee

COMMERCIAL BLENDER, COMPOSTER,
MIXER, PREPARER, OR LAND APPLIER
OF SEWAGE SLUDGE FACILITY

CORPORATE GUARANTEE FOR LIABILITY COVERAGE,
CLOSURE, AND/OR POST-CLOSURE CARE

* * *

[See Prior Text in Corporate Guarantee]

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

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

* * *

[See Prior Text in Corporate Guarantee]

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

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

Mike D. McDaniel, Ph.D.
Secretary

0509#011

DECLARATION OF EMERGENCY

Office of the Governor
Boxing and Wrestling Commission

Boxing and Wrestling Standards
(LAC 46:XI.101, 108, and 325)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(b) and 49:967(D), and adopts the following Rule. This Emergency Rule is necessary to promote the safety of contestants, other participants and spectators in that it will require participants in all sports under the jurisdiction of The Louisiana State Boxing and Wrestling Commission. This Emergency Rule repromulgates and moves to Chapter 1, General Rules, the rule on HIV testing, previously §325.B, Physicians, and clarifies definition of contestant.

This Emergency Rule is effective upon signature and will remain in effect for a period of 120 days, unless renewed by the commissioner or until adoption of the final Rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XI. Boxing and Wrestling
Chapter 1. General Rules
§101. Definitions

* * *

Contestant any participant in all sports under the jurisdiction of this commission including but not limited to boxing, wrestling, kickboxing and martial arts sports.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), LR 31:

§108. Medical Requirements

A. Each contestant participating in any sport under this commission's jurisdiction must furnish to the commission physician a certified medical certificate evidencing that the contestant has been tested for HIV and said test results are negative. Said test and certificate shall be dated not more than six months prior to the scheduled event and said certificate is to be presented at the time of "weigh in."

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 31:

§325. Physician

A. …

B. Repealed.

C. - D.9. …

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:70.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 31:

Buddy Embanato
Chairman

0509#030

DECLARATION OF EMERGENCY

Office of the Governor
Commission on Law Enforcement and Administration of Criminal Justice

Peace Officer Training (LAC 22:III.4771)

The following amendment is published in accordance with the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, which allows the Council on Peace Officer Standards and Training (POST) to promulgate rules necessary to carry out its business or the provision of Chapter 47.

The Emergency Rule is effective on September 6, 2005 to provide a procedure for retired peace officers to serve as "provisional peace officers" during a state of emergency within a declared emergency zone. The Emergency Rule will remain in effect for 120 days or until a final Rule takes effect through the normal rule-making process, whichever occurs first.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part III. Commission on Law Enforcement and Administration of Criminal Justice
Subpart 4. Peace Officers
Chapter 47. Standards and Training
§4771. Emergencies and/or Natural Disasters

A. All previously certified and registered peace officers who have retired from full time law enforcement service for five years or more will be granted the authority to serve as "provisional peace officers" for the agency from which they retired during a state of emergency within a declared emergency zone. The "provisional peace officer" applicant must successfully qualify with his/her duty weapon as soon as possible with a POST certified firearms instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 31:

Michael A. Ranatza
Executive Director

0509#015

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payment Methodologies
Small Rural Hospitals (LAC 50:V.311)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:V.311 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and Act 323 of the 2005 Regular Session of the Louisiana Legislature. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated 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). The department subsequently promulgated an Emergency Rule to repeal and replace all provisions governing disproportionate share hospital payments in compliance with Act 491, Act 1024 and Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session (*Louisiana Register,* Volume 29, Number 6). In compliance with Acts 14, 526 and 1148 of the 2003 Regular Session, the department amended the July 1, 2003 Emergency Rule to amend the qualifying criteria and the payment methodology for disproportionate share payments to small rural hospitals *(Louisiana Register,* Volume 29, Number 9). The department subsequently promulgated an Emergency Rule to repeal and replace all rules governing disproportionate share hospital payment methodologies *(Louisiana Register,* Volume 31, Number 6).

Act 182 of the 2005 Regular Session, enacted as the Healthcare Affordability Act, established the Louisiana Healthcare Affordability Trust Fund as a special fund in the state treasury. The monies in the fund shall be generated by a provider fee levied on all hospitals licensed by the state under R.S. 40:2100 et seq., except for those hospitals specifically exempted by the provisions contained in Act 182. In compliance with Act 182, the department amended the June 26, 2005 Emergency Rule governing the disproportionate share payment methodologies for hospitals *(Louisiana Register,* Volume 31, Number 7).

Act 323 of the 2005 Regular Session of the Louisiana Legislature amended R.S. 40:1300.143(3)(a)(xii), relative to the Rural Hospital Preservation Act, to provide an additional definition of a rural hospital. This Emergency Rule is being promulgated to amend the definition of a small rural hospital as contained in the June 26, 2005 Emergency Rule, in compliance with Act 323. This action is being taken to enhance federal revenue. It is estimated that the implementation of this Emergency Rule will increase revenues by approximately $250,000 in federal funds only for state fiscal year 2005-06. Effective September 1, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the definition of a rural hospital contained in the provisions governing disproportionate share hospital payment methodologies.

Title 50
PUBLIC HEALTH–MEDICAL ASSISTANCE
Part V. Medical Assistance Program–Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 3. Disproportionate Share Hospital Payment Methodologies
§311. Small Rural Hospitals

A. Definitions

* * *

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; or

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003, of its intent to reduce its number of hospital beds to no more than 60; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 7,000;

ii. is located, as measured by the 2000 census, in a parish with a population of less than 53,000; and

iii. is located within 10 miles of a United States military base; or

j. has no more than 60 hospital beds as of September 26, 2002; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 10,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 33,000; or

k. has no more than 60 hospital beds as of January 1, 2003; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 11,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 90,000; or

l. has no more than 40 hospital beds as of January 1, 2005, and

i. is located in a municipality with a population of less than 3,100; and

ii. is located in a parish with a population of less than 15,800 as measured by the 2000 census.

B. Payment based on uncompensated cost for qualifying small rural hospitals shall be in accordance with the following four pools.

1. *Public (Nonstate) Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 which are owned by a local government.

2. *Private Small Rural Hospitals*—small rural hospitals as defined in §311.A.2 that are privately owned.

3. *Small Rural Hospitals*—small rural hospitals as defined in §311.A.2.i-k.

4. *Small Rural Hospitals*-small rural hospitals as defined in §311.A.2.l.

C. Payment to hospitals included in §311.B.1 - 3 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. Payments to hospitals included in §311.B.4 shall be the lesser of the hospital's actual uncompensated care cost or $250,000. 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. - E. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

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 all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0509#010

DECLARATION OF EMERGENCY

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

Mental Health Rehabilitation Program
(LAC 50:XV.101, 323-325, and 335)

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 Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a rule to repeal the existing rules promulgated prior to 2004 and adopt new provisions governing the administration of the Mental Health Rehabilitation Program (*Louisiana Register,* Volume 31, Number 5). The bureau promulgated an Emergency Rule to delay the implementation of the provisions contained in the May 20, 2005 Rule until August 1, 2005 and rescinded the language prohibiting the provision of certain mental health rehabilitation services to children and adolescents in the custody of the Office of Community Services or the Office of Youth Services (*Louisiana Register,* Volume 31, Number 6). This Emergency Rule is being promulgated to continue provisions contained in the June 1, 2005 Rule. This action is being taken to promote the health and well being of Medicaid recipients who are receiving mental health rehabilitation services by assuring continuity of services during the transition period to the restructured Mental Health Rehabilitation Program.

Effective September 29, 2005, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing delays the implementation of the provisions contained in the May 20, 2005 Rule governing the administration of the Mental Health Rehabilitation Program until August 1, 2005. In addition, the bureau rescinds the language prohibiting the provision of certain mental health rehabilitation services to children and adolescents in the custody of the Office of Community Services or the Office of Youth Services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 1. Mental Health Rehabilitation
Chapter 1. General Provisions
§101. Introduction

A. - C. …

D. Mental Health Rehabilitation services shall be covered and reimbursed for any eligible Medicaid recipient who meets the medical necessity criteria for services. The department will not reimburse claims determined through the prior authorization or monitoring process to be a duplicated service.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

Chapter 3. Covered Services and Staffing Requirements

Subchapter B. Mandatory Services

§323. Parent/Family Intervention (Counseling)

A. - C.4. …

D. Service Exclusion. This service may not be combined on a service agreement with Parent/Family Intervention (Intensive).

E. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

§325. Psychosocial Skills Training-Group (Youth)

A. - B.2. …

C. Service Exclusions. This service may not be combined on a service agreement with the following services:

1. Parent/Family Intervention (Intensive); or
2. Psychosocial Skills Training-Group (Adult).

D. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

Subchapter C. Optional Services

§335. Parent/Family Intervention (Intensive)

A. - B.3. …

C. Service Exclusions. This service may not be combined on a service agreement with the following services:

1. Community Support;
2. Psychosocial Skills Training-Group (Adult);
3. Psychosocial Skills Training-Group (Youth);
4. Individual Intervention/Supportive Counseling;
   a. an exception may be considered for a recipient with unique needs;
5. Group Counseling; or
6. Parent/Family Intervention (Counseling).

D. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:

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 all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0509#058

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections
Office of State Police

Motor Carrier Safety and Hazardous Materials
(LAC 33:V.10303)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Public Safety and Corrections to use emergency procedures to establish rules, and under the authority of R.S. 32:1501 et seq., the deputy secretary of the department hereby declares that an emergency action is necessary to implement rules regarding motor carrier safety regulations due to the necessity to save lives in the aftermath of Hurricane Katrina.

This Emergency Rule is effective September 2, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials
Subpart 2. Department of Public Safety and Corrections Hazardous Materials

Chapter 103. Motor Carrier Safety and Hazardous Materials

§10303. Federal Motor Carrier Safety and Hazardous Materials

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of April 28, 2003 and contained in the following parts of 49 CFR as now in effect or as hereafter amended, are made a part of this Chapter.

Hazardous Material Regulations	
Part 171	General Information, Regulations, and Definitions
Part 172	Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements
Part 173	Shippers General Requirements for Shipments and Packagings
Part 177	Carriage by Public Highways
Part 178	Specifications for Packagings
Part 180	Continuing Qualification and Maintenance of Packagings
Motor Carrier Safety Regulations	
Part 382	Controlled Substances and Alcohol Use and Testing
Part 383	Commercial Driver's License Standards; Requirements and Penalties
Part 385	Safety Fitness Procedures
Part 390	Federal Motor Carrier Safety Regulations; General

Motor Carrier Safety Regulations	
Part 391	Qualifications of Drivers
Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair, and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking Rules

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 20:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 29:711 (May 2003), LR 31:

Henry L. Whitehorn
Deputy Secretary

0509#014

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections
Office of State Police
Applied Technology Unit

Analysis of Breath Maintenance Inspection for Intoxilyzer 5000 (LAC 55:I.515)

The Department of Public Safety and Corrections, Office of State Police, Applied Technology Unit has adopted the following Emergency Rule amendment in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. This Emergency Rule amendment is adopted effective September 02, 2005 and shall remain in effect for a maximum of 120 days or until promulgated as a final Rule whichever occurs first. As a result of the widespread damage caused by Hurricane Katrina, the department is unable to conduct the inspections necessary to recertify the Intoxilyzer 5000 machines, particularly those located in the parishes of southeast Louisiana, whose recertification anniversary dates fall within the upcoming weeks. It is necessary for the department to promulgate a rule amendment in order to extend the current period of certification for these Intoxilyzer 5000 machines by an additional 180 days. The additional period of time will allow the department to take necessary measures to ensure that each Intoxilyzer 5000 receives the required recertification inspection and any necessary maintenance before the current period expires. Failure to immediately adopt an administrative rule amendment extending the current certification period will leave those law enforcement agencies whose Intoxilyzer 5000 machines' recertification anniversary date passes without a certified Intoxilyzer 5000 and will seriously impair the enforcement and successful prosecution of state law for driving under the influence of alcohol. The department expressly declares that the ineffective enforcement and unsuccessful prosecution of individuals who violate state law by driving under the influence of alcohol poses a public safety hazard to the citizens of the state of Louisiana who utilize its public highways and roadways.

Title 55
PUBLIC SAFETY
Part 1. State Police
Chapter 5. Breath and Blood Alcohol Analysis Methods and Techniques
Subchapter A. Analysis of Breath
§515. Maintenance Inspection for the Intoxilyzer 5000

A. Maintenance inspection shall be performed on a routine basis at least once every four months by the applied technology director, breath analysis supervisor, breath analysis instructor specialist, or applied technology specialist. Items to be inspected shall include, but not be limited to the following:

1. clean instrument;
2. running of a known alcohol value thereby checking the instrument and calibration. Results shall be within plus or minus 0.010 grams percent of the known alcohol value;
3. insure that the instrument is locked;
4. check printer to see if it is printing out properly;
5. check breath tube inlet hose;
6. in event repair work is needed, it shall be recorded in detail.

B. Those Intoxilyzer 5000 machines whose current four month certification period ends between September 2, 2005 and December 31, 2005 shall have an extended certification period and shall not be due for recertification maintenance inspection until an additional 180 days after the current recertification anniversary date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:364(June 1988), repromulgated LR 14:444 (July 1988), amended LR 17:675 (July 1991), repromulgated LR 17:798 (August 1991), amended by the Department of Public Safety and Corrections, Office of State Police, Applied Technology Unit, LR 31:

Stephen Hymel
Undersecretary

0509#050

DECLARATION OF EMERGENCY

Department of Public Safety
Office of State Police
Applied Technology Unit

Analysis of Breath Operator Certification (LAC 55:I.509)

The Department of Public Safety and Corrections, Office of State Police, Applied Technology Unit has adopted the following Emergency Rule amendment in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. This Emergency Rule amendment is adopted effective September 02, 2005 and shall remain in effect for a maximum of 120 days or until promulgated as a final rule whichever occurs first. As a result of the widespread damage caused by Hurricane Katrina, the department is unable to recertify those law enforcement officers, particularly those located in the parishes of southeast Louisiana, whose training certification on the use and operation of the Intoxilyzer 5000

will expire in the upcoming weeks. It is necessary for the department to promulgate a rule amendment in order to extend the current period of certification for these law enforcement officers by pushing back the expiration date of the certification by 180 days. The additional period of time will allow the department to take necessary measures to ensure that each officer receives the required recertification training before the current period expires. Failure to immediately adopt an administrative rule amendment extending the current certification period will leave those law enforcement officers whose certification period expires without the ability to operate the Intoxylizer 5000 and will seriously impair the enforcement and successful prosecution of state law for driving under the influence of alcohol. The department expressly declares that the ineffective enforcement and unsuccessful prosecution of individuals who violate state law by driving under the influence of alcohol poses a public safety hazard to the citizens of the state of Louisiana who utilize its public highways and roadways.

Title 55
PUBLIC SAFETY
Part 1. State Police
Chapter 5. Breath and Blood Alcohol Analysis Methods and Techniques
Subchapter A. Analysis of Breath
§509. Permits

A. Upon determining the qualification of individuals to perform such analysis and duties, and after submitting an application for certification, the Louisiana Department of Public Safety and Corrections shall issue permits which shall be effective for the following periods with respect to classification.

1. Operator's Certification

a. Operators shall be certified for a period of two years following successful completion of the 16-hour operator's training course. These permits may be renewed after a refresher course given by the Applied Technology Unit or any other agency approved by the Applied Technology Unit.

b. In addition to being certified on any instrument currently approved by the Applied Technology Unit, an operator may also attend a specified course for certification on any new instrument that may be approved by the Applied Technology Unit. These permits shall also be in effect for a period of two years.

2. Breath Alcohol Testing Field Supervisors. Breath alcohol testing field supervisors shall be certified for a period of two years.

3. Instructors. Instructors shall be certified for a period of five years. However, once he is no longer involved in a chemical testing program, his certification shall terminate and then only be recertified after he has once again become involved in a chemical testing program and demonstrated his knowledge of instructions to the applied technology director.

4. Maintenance. Once an applied technology director, breath analysis supervisor, breath analysis instructor specialist, or applied technology specialist is initially certified, his permit shall remain effective for the duration of his employment.

B. Those permits with expiration dates between September 02, 2005 and December 31, 2005 are extended and shall be valid for an additional 180 days from the current listed date of expiration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 4:390 (October 1978), amended LR 6:660 (November 1980), amended by the Department of Public Safety and Corrections, Office of State Police, LR 11:256 (March 1985), LR 14:363 (June 1988), repromulgated LR 14:443 (July 1988), amended LR 17:674 (July 1991), repromulgated LR 17:797 (August 1991), amended by LR 27:1931 (November 2001), amended by Department of Public Safety and Corrections, Office of State Police, Applied Technology Unit, LR 31:

Stephen Hymel
Undersecretary

0509#012

DECLARATION OF EMERGENCY

Department of Revenue
Policy Services Division

Hurricane Katrina—Hotel Sales Tax Exclusion
Uniform State and Local Sales Tax Definitions
(LAC 61:I.4301)

The Department of Revenue, Policy Services Division, is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to clarify what "transient guest" means for purposes of the state sales tax imposition on the taxable service of furnishing sleeping rooms, cottages or cabins by hotels.

This Emergency Rule is being adopted to provide tax relief for citizens whose occupancy of hotel rooms in Louisiana was necessitated when Hurricane Katrina displaced them from their normal places of dwelling. This Emergency Rule will apply to the four percent sales tax imposed by the State of Louisiana and the Louisiana Tourism Promotion District.

This Emergency Rule is effective August 27, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 43. Sales and Use Tax
§4301. Uniform State and Local Sales Tax Definitions

A. …

B. Words, terms and phrases defined in R.S. 47:301(1) through R.S. 47:301(27), inclusive, have the meaning ascribed to them therein and as further provided in §4301.C.

C. …

Hotel

a. The term *hotel* has been defined under R.S 47:301(6) to be somewhat more restrictive than normally construed, both as to use of the facility and relative size. Only those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins primarily to transient guests consisting of six or more guest or sleeping

rooms at a single business location meet the statutory definition. If an establishment has less than six sleeping rooms, cottages or cabins at a single business location or if more than one-half of the guests are permanent, regardless of the number of sleeping rooms, cottages or cabins, the establishment is not a *hotel* for purposes of *state* and *local sales or use tax*.

b.i. In determining whether an establishment furnishes sleeping rooms primarily to transient guests, each guest must be considered individually. A guest who engages his lodging and pays his bill on a monthly basis and who remains as a guest for two consecutive months is considered to be a permanent guest and not transient. Guests who remain for any lesser period are considered transient.

ii. Solely for purposes of the sales tax imposed by the State of Louisiana and the Louisiana Tourism Promotion District, persons whose occupancy of hotel rooms in Louisiana is attributable solely to their displacement from their normal places of dwelling in areas that were declared by the President of the United States to be natural disaster areas will not be considered transient guests with respect to such occupancy. Hotel guests claiming not to be transient under these provisions must furnish hoteliers with the complete residential addresses from which they were displaced and written statements that their occupancy of the hotel rooms was attributable to such displacement.

* * *

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002), LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 31:

Raymond E. Tangney
Senior Policy Consultant

0509#013

DECLARATION OF EMERGENCY

Department of Revenue
Policy Services Division

Sales Tax Refund for Tangible Personal Property
Destroyed in a Natural Disaster
(LAC 61:I.4371)

The Department of Revenue, Policy Services Division, is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to clarify the types of property destroyed in natural disasters, the sales tax paid on which will be eligible for refund under R.S. 47:315.1. This statute provides that refunds are available of the state sales taxes paid on destroyed property "used in or about a person's home, apartment, or homestead". This Emergency Rule deletes from the existing Rule any language that might suggest that refunds are available on vehicles, boats, and boat trailers that are acquired and intended for use away from the home, apartment, or homestead, and adds language that provides specifically that refunds will not be made of the taxes paid on such property.

This Emergency Rule is being adopted to provide accurate tax information to and facilitate the prompt issuance of refunds to persons whose property was destroyed by Hurricane Katrina. This Emergency Rule will apply to the four percent sales tax imposed by the State of Louisiana and the Louisiana Tourism Promotion District.

This Emergency Rule is effective September 8, 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until the promulgation of a permanent rule, whichever is sooner.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 43. Sales and Use Tax
§4371. Sales Tax Refund for Tangible Personal Property Destroyed in a Natural Disaster

A. Under certain circumstances, a refund is allowed for state sales or use tax paid on tangible personal property that has been destroyed in a natural disaster. The conditions and requirements are as follows.

1. The property destroyed must be classified as tangible personal property at the time of destruction rather than being classified as real or immovable property. For purposes of determination of the classification of such property, reference and guidance shall be to the rules of the Louisiana Civil Code. In Louisiana, property is classified as either movable or immovable rather than as personal or real. Under Louisiana law a corporeal movable is equivalent to tangible personal property at common law, and an immovable is equivalent to real property. Generally speaking a house or a building and all central heating or cooling systems, lighting fixtures, lavatories, etc. that are actually connected with or attached to the house or building by the owner are immovable by their nature. Such items as clothing, drugs, food, recreation equipment, appliances not permanently attached to a house or building where the removal thereof would not damage the movable or immovable, etc. would be classified as tangible personal property or movable property. Automobiles, trucks, motorcycles, boats, boat trailers, and other vehicles will not be considered tangible personal property used in or about a person's home, apartment, or homestead, the sales tax paid on which will be refunded under this statute.

2. Such property destroyed must be a part of and used in or about a person's home, apartment or homestead, on which Louisiana sales tax has been paid by the owner of the property destroyed in an area subsequently determined by the president of the United States to warrant assistance by the federal government. Therefore, it is necessary that individuals suffer the loss, since R.S. 47:315.1 does not apply to partnerships or corporations. Further, it does not apply to business losses, even by individuals, since the law limits the losses to property that is part of and used in or about a person's home, apartment or homestead. Also, the area where the natural disaster occurred must be designated as an area warranting assistance by the federal government in order to qualify under this Section.

3. The claimant suffering the loss of the tangible personal property must be the owner of such property that

was destroyed in Louisiana, as well as being the one who purchased and paid the Louisiana sales tax on such property. Any refund claim filed shall be made in accordance with the rules and regulations prescribed by the secretary. Accordingly, any refund claim shall be filed on or before the end of the third calendar year following the year in which the property was destroyed, and the refund claim shall be limited to the tax paid on such tangible personal property destroyed for which no reimbursement was received by insurance or otherwise.

B. A refund claim packet can be obtained from the secretary, and when the claimant properly executes the required forms and prepares a sworn statement attesting to the facts, a refund will be processed.

C. The secretary may estimate the sales tax originally paid on the purchase of the tangible personal property that was destroyed if the taxpayer is unable to provide documentation to show the actual amount of tax that was paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:315.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:99 (January 2005), LR 31:

Raymond E. Tangney
Senior Policy Consultant

0509#032

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2005 Alligator Season

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act and LAC 76:V.701, the Secretary of the Department of Wildlife and Fisheries does hereby delay the opening and closing dates of the 2005 wild alligator harvest season as set out below.

Hurricane Katrina struck southeast Louisiana on August 29, 2005 resulting in catastrophic damage. This catastrophe has severely impacted over a million residents, flooded thousands of homes, and hundreds of thousands of acres of coastal marshes. Alligator populations in affected areas have been displaced and suffered some degree of direct mortality. Assessment of these impacts is ongoing. Additionally, many communities in the affected area are without electricity, water, and telephone service, gasoline and ice are in short supply, and processors and dealers are unable to locate refrigerated trucks used for hauling and storage of alligators, meat and skins. Many of the state's alligator hunters are still displaced. The lack of these resources will severely limit alligator processing and harvesting capabilities in southeast Louisiana.

Therefore, the opening and closing dates of the 2005 wild alligator season will be delayed seven days, to open statewide on September 14, 2005, and to close statewide on October 13, 2005. Alligators taken from the wild may be removed from hook and line and taken with other legal capture devices only during daylight hours between official sunrise and official sunset.

Emergency procedures are necessary due to the magnitude of the impact of Hurricane Katrina on southeastern Louisiana.

Dwight Landreneau
Secretary

0509#023

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2005-2006 Hunting Season for Ducks, Coots, and Geese

In accordance with the emergency provisions 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 adopts the following Emergency Rule.

The hunting season for ducks, coots and geese during the 2005-2006 hunting season shall be as follows:

DUCKS AND COOTS: (EXCEPT CANVASBACK) (60 Days)
West Zone: November 12-December 4
December 17-January 22
East Zone: (Including Catahoula Lake) November 19-December 4
December 17-January 29

CANVASBACK: (30 days)
Statewide: December 17-January 15

YOUTH WATERFOWL WEEKEND: November 5-6 in West Zone, November 12-13 in East Zone

Daily Bag Limits: The daily bag limit on ducks is 6 and may include no more than 4 mallards (no more than 2 of which may be females), 1 pintail, 3 mottled ducks, 1 black duck, 2 wood ducks, 2 scaup, and 2 redheads. During the specified 30-day season for canvasbacks and during youth hunts the daily bag is 1 canvasback. Daily bag limit on coots is 15.

Mergansers: The daily bag limit for mergansers is 5, only 1 of which may be a hooded merganser. Merganser limits are in addition to the daily bag limit for ducks.

Possession Limit: The possession limit on ducks, coots and mergansers is twice the daily bag limit.

GEESE:

LIGHT GEESE (SNOW, BLUE and ROSS'S) and WHITE-FRONTED GEESE

STATEWIDE: (72 days) November 12 - December 4
December 17-February 3
Daily bag limit on light geese (snow, blue and Ross's): 20
Possession limit on light geese (snow, blue and Ross's): None
Daily Limit on white-fronted geese: 2
Possession Limit on white-fronted geese: 4

CANADA GEESE: CLOSED IN THE AREA DESCRIBED BELOW
January 14-January 22
Daily Limit on Canada geese: 1
Possession limit on Canada geese: 2

The Canada Goose Season will be open statewide except for a portion of southwest Louisiana. The closed area is described as follows: Beginning at the Texas State Line, proceeding east along Hwy. 82 to the Calcasieu Ship Channel, then north along the Calcasieu Ship Channel to its junction with the Intracoastal Canal, then east along the Intracoastal Canal to its juncture with LA Hwy. 82, then south along LA Hwy. 82 to its juncture with Parish Road 3147, then south and east along Parish Road 3147 to Freshwater Bayou Canal, then south to the Gulf of Mexico, then west along the shoreline of the Gulf of Mexico to the Texas State Line, then north to the point of beginning at LA Hwy. 82.

A special permit shall be required to participate in the Canada Goose Season. A permit is required of everyone, regardless of age, and a non-refundable $5 administrative fee will be charged. This permit may be obtained from any license vendor.

CONSERVATION ORDER FOR LIGHT GEESE (SNOW, BLUE AND ROSS'S):

Statewide: December 5-December 16
February 4-March 12

Only snow, blue and Ross's geese may be taken under the terms of the Conservation Order, which allows the use of electronic calls and unplugged shotguns and eliminates the daily bag and possession limits. During the Conservation Order, shooting hours begins one-half hour before sunrise and extends until one-half hour after sunset.

RAILS: November 12-January 11

KING AND CLAPPER: Daily bag limit 15 in the aggregate, Possession 30.

SORA AND VIRGINIA: Daily bag and possession 25 in the aggregate.

GALLINULES: November 12-January 11
Daily bag limit 15, Possession limit 30

SNIPE: November 5-December 7
December 17-February 28
Daily bag limit 8, Possession limit 16

Shooting Hours: One-half hour before sunrise to sunset, except at the Spanish Lake Recreation Area in Iberia Parish where shooting hours, including the Conservation Order, end at 2 p.m.

EXTENDED FALCONRY SEASONS FOR DUCKS, RAILS AND GALLINULES:

Statewide: November 5-February 10

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective November 1, 2005 and extend through one-half hour after sunset on March 12, 2006.

Dwight Landreneau
Secretary

0509#024

Rules

RULE

Department of Agriculture and Forestry
Livestock Sanitary Board

Pet Turtles Salmonella (LAC 7:XXI.Chapter 23)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the law authorizing the amendment of the Rules and regulations of the Louisiana Department of Agriculture and Forestry, R.S. 3:2358.2, the Commissioner of Agriculture and Forestry hereby amends regulations regarding the testing of pet turtles and eggs for *Salmonella*.

The Louisiana pet turtle industry produces and sells over ten million turtles annually, thereby bringing an estimated $9-12 million annually into Louisiana's economy. Louisiana's pet turtle industry depends on sales of pet turtles in foreign markets because the United States Food and Drug Administration (USDA) have banned the sale of pet turtles in the United States. The sale of pet turtles in the U.S. is banned because of the bacteria S*almonella*. Although *Salmonella* can be successfully suppressed by the use of antibiotics, USDA is concerned that the sale of pet turtles treated with antibiotics will increase the risk of the bacteria developing a resistance to current antibiotics. USDA will not consider lifting the ban on the sale of pet turtles in the U.S. until pet turtles can be successfully treated for *Salmonella* with a non-antibiotic product.

Louisiana's pet turtle industry has been able to maintain a market for pet turtles because some foreign countries are importing pet turtles to be raised and harvested for food. These countries are not requiring the pet turtles to be tested for *Salmonella*. Testing for *Salmonella* is expensive, with each test costing approximately $280. Since the average lot of pet turtles tested annually is approximately 5,000, the annual cost of *Salmonella* testing to Louisiana pet turtle farmers is $1,400,000. The cost of these tests cannot be passed on to the purchasers of pet turtles because of the rapid decline in prices. Therefore, these Rules are necessary in order to allow pet turtle farmers to use a non-antibiotic treatment and to avoid the financial burden of unnecessary testing.

These Rules comply with and are enabled by R.S. 3:2358.2. No preamble concerning the proposed Rules is available.

Title 7
AGRICULTURE AND ANIMALS
Part XXI. Diseases of Animals
Chapter 23. Pet Turtles
§2301. Definitions

A. In addition to the definitions listed below, the definitions in R.S 3:2358.3 shall apply to these regulations.

* * *

Baquacil/Vantacil a chemical product classified as a polyhexamethydme biguamide dissolved in water to give a concentration of 50 ppm or a concentration as approved by the department.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), amended by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1567 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2210 (September 2005).

§2305. Collection of Egg and Turtle Samples

A. In order to ensure a representative sample from the turtle group and to prevent cross-contamination the following procedures shall be followed.

1. Licensed turtle farmers shall inform the department in a timely manner of their intention to ship turtle hatchlings or eggs to arrange certification procedures.

2. Upon notification by the farmer, a department employed veterinarian shall inspect the group of turtles or turtle eggs bound for shipment for visible signs of infections, contagious or communicable diseases. The veterinarian or designee shall randomly select turtles or eggs for submission to a certified laboratory for microbiological examination unless the turtles to be shipped are food turtles in which case the random selection of turtles and submission to a certified laboratory may be omitted.

3. - 4. …

5. The transportation to a certified laboratory for microbiological examination and handling of the samples of turtles and eggs shall be performed in such a manner as to maintain identity and integrity.

6. Licensed turtle farmers shall have the option of:

a. collecting samples under the on-site supervision of the department-employed veterinarian or designee; or

b. allowing the department veterinarian or designee to collect the samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9, 3:2358.10 and 3:2358.12.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1568 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2210 (September 2005).

§2311. Microbiological Test Procedures

A. - C. …

D. All pet turtles that are on turtle farms operated by licensed turtle farmers shall originate from eggs that are produced on turtle farms operated by licensed pet turtle farmers and have been subjected to the egg immersion method of treatment. All turtles, other than those designated and shipped as food turtles, shall be randomly sampled and tested by a certified laboratory for *Salmonella.* The pond water in which food turtles are raised shall be tested at least once every year by a certified laboratory for *Vibria Cholera.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 30:1445 (July 2004), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2210 (September 2005).

§2313. Issuance of Health Certificates

A. Accredited Louisiana-licensed and department-approved veterinarians will issue official health certificates.

B. Health certificates shall not be issued on groups of turtles or eggs until the turtles or eggs and pond in which the turtles are raised have been inspected and tested as required by these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2211 (September 2005).

§2321. Proper Disposal

A. Because of the danger posed by the emergence of bacteria resistant to antibiotics used to kill *Salmonella* and other harmful bacteria, licensed pet turtle farmers who use Garosol to treat turtle eggs and/or turtles shall follow approved disposal procedures, including but not limited to, the following:

A.1. - B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2211 (September 2005).

Bob Odom
Commissioner

0509#021

RULE

Board of Elementary and Secondary Education

Bulletin 741 Louisiana Handbook for School Administrators High School Graduation Requirements (LAC 28:CXV.2319)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education revised *Bulletin 741 Louisiana Handbook for School Administrators* in §2319.F-F1.b. This revision to the BESE policy for Academic Diploma Endorsements is intended to update the policy based on legislation passed in Spring 2004 affecting the TOPS Core Curriculum. Legislation passed in 2004 (Act 472) changes TOPS policy for graduates in 2007-2008 and beyond to include the requirement of an additional math or science course from the TOPS core. Current policy for the Academic Endorsement states students must meet the TOPS course requirements plus take an additional math, science or social studies course. The change in TOPS legislation would require graduates in 2007-2008 to meet the current TOPS core and have two additional courses in order to earn an Academic Endorsement. This policy requires graduates in 2007-2008 and beyond who receive an Academic Endorsement to meet the new TOPS core and does not require an additional math, science or social studies course. This revision is equivalent to the current course requirements for the Academic Endorsement.

Title 28
EDUCATION
Part CXV. Bulletin 741C Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
§2319. High School Graduation Requirements

A. Standard Diploma

1. The 23 units required for graduation shall include 15 required units and 8 elective units; the elective units can be earned at technical colleges as provided in §2389.

B. In addition to completing a minimum of 23 Carnegie credits, students must pass the English language arts and mathematics components of the GEE 21 and either the science or social studies portions of GEE 21 to earn a standard high school diploma.

1. The English language arts and mathematics components of GEE 21 shall first be administered to students in the 10th grade.

2. The science and social studies components of the graduation test shall first be administered to students in the 11th grade.

3. Remediation and retake opportunities will be provided for students that do not pass the test. Students shall be offered 50 hours of remediation each year in each content area they do not pass. Refer to Bulletin 1566 Guidelines for Pupil Progression, and the addendum to Bulletin 1566 Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program, Regular School Year.

4. Students may apply a maximum of two Carnegie units of elective credit toward high school graduation by successfully completing specially designed courses for remediation.

a. A maximum of one Carnegie unit of elective credit may be applied toward meeting high school graduation requirements by an eighth grade student who has scored at the Unsatisfactory achievement level on either the English language arts and/or the mathematics component(s) of the eighth grade LEAP 21 provided the student:

i. successfully completed specially designed elective(s) for LEAP 21 remediation;

ii. scored at or above the basic achievement level on those component(s) of the eighth grade LEAP 21 for which the student previously scored at the Unsatisfactory achievement level.

C. Prior to or upon the student's entering the tenth grade, all LEAs shall notify each student and his/her parents or guardians of the requirement of passing GEE 21.

1. Upon their entering a school system, students transferring to any high school of an LEA shall be notified by that system of the requirement of passing GEE 21.

D. The Certificate of Achievement is an exit document issued to a student with a disability after he or she has achieved certain competencies and has met certain conditions. Refer to Bulletin 1706 Regulations for the Implementation of the Children with Exceptionalities Act.

E. Minimum Course Requirements for High School Graduation

English	4 units
Shall be English I, II, and III, in consecutive order; and English IV or Business English.	
Mathematics	**3 units**
(Effective for incoming freshmen 2005-2006 and beyond.) All students must complete one of the following: • Algebra I (1 unit) or • Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units) or • Integrated Mathematics I (1 unit) The remaining unit(s) shall come from the following: Integrated Mathematics II, Integrated Mathematics III, Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics. (Effective for incoming freshmen 1997-98 through 2004-2005) Shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics	
Science	**3 units**
Shall be the following: 1 unit of Biology 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I, Physics of Technology I 1 unit from the following courses: Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, an additional course from the physical science cluster, or a locally initiated science elective. • Students may not take both Integrated Science and Physical Science • Agriscience I is a prerequisite for Agriscience II and is an elective course.	
Social Studies	**3 units**
Shall be American History, one-half unit of Civics, one-half unit of Free Enterprise; and one of the following: World History, World Geography, or Western Civilization	
Health Education	**1/2 unit**
Physical Education	**1 1/2 units**
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of four units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Electives	**8 units**
TOTAL	**23 units**

F. High School Area of Concentration

1. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

a. To complete an academic area of concentration, students shall meet the current course requirements for the Tuition Opportunity Program for Students (TOPS) Opportunity Award. Graduates in 2004-2005 to 2006-2007 must have one additional Carnegie unit in mathematics, science, or social studies.

b. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each

G. Academic Endorsement

1. Graduating seniors in 2005 and thereafter who meet the requirements for a standard diploma and satisfy the following performance indicators shall be eligible for an academic endorsement to the standard diploma.

a. Students shall complete the academic area of concentration.

b. Students shall pass all four components of GEE 21 with a score of basic or above, or one of the following combinations of scores with the English language arts score at basic or above:

i. one approaching basic, one mastery or advanced, basic or above in the remaining two; or

ii. two approaching basic, two mastery or above.

c. Students shall complete one of the following requirements:

i. senior project;

ii. one carnegie unit in an AP course with a score of three or higher on the AP exam;

iii. one carnegie unit in an IB course with a score of four or higher on the IB exam; or

iv. three college hours of non-remedial, articulated credit in mathematics, social studies, science, foreign language, or English language arts.

d. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

e. Students shall achieve an ACT Composite Score of at least 23.

H. Career/Technical Endorsement

1. Graduating seniors in 2005 and thereafter who meet the requirements for a standard diploma and satisfy the following performance indicators shall be eligible for a career/technical endorsement to the standard diploma.

a. Students shall meet the current course requirements for the TOPS Opportunity Award or the TOPS Tech Award.

b. Students shall complete the career area of concentration.

c. Students shall pass the English language arts, mathematics, science, and social studies components of the GEE 21 at the Approaching Basic level or above.

d. Students shall complete a minimum of 90 work hours of work-based learning experience (as defined in the DOE Diploma Endorsement Guidebook) and complete one of the following requirements:

i. industry-based certification from the list of industry-based certifications approved by BESE; or

ii. three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours.

e. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award or the TOPS Tech Award.

f. Students shall achieve the current minimum ACT Composite Score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award.

I. A Louisiana state high school diploma cannot be denied to a student who meets the state minimum high school graduation requirements; however, in those instances in which BESE authorizes an LEA to impose more stringent academic requirements, a school system diploma may be denied.

J. Each school shall follow established procedures for special requirements for high school graduation to allow each to address individual differences of all students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R. S. 17:183.2; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:2211 (September 2005).

Weegie Peabody
Executive Director

0509#002

RULE

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs Core Curriculum, Graduate Students, and Rockefeller State Wildlife Scholarship
(LAC 28:IV.701, 703, and 1107)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1)(SG0560R).

Title 28
EDUCATION
Part IV. Student Financial Assistance- Higher Education Scholarship and Grant Programs
Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

§701. General Provisions

A. - E.11.c. …

12. A student who successfully completes an undergraduate degree without having exhausted his period of award eligibility shall receive an award for the remainder of his eligibility if he enrolls in graduate or professional school at an eligible college or university no later than the fall semester immediately following the first anniversary of the student's completion of an undergraduate degree and has met the requirements for continued eligibility set forth in §705.A.6. The remaining eligibility may not be used to pursue a second undergraduate degree.

F. - G.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, 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 22:338 (May 1996), amended LR 23:1645-1648 (December 1997), repromulgated 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 (September 2000), LR 26:2000 (September 2000), repromulgated LR 27:1848 (November 2001), amended LR 28:447 (March 2002), LR 28:2331 (November 2002), LR 29:880 (June 2003), LR 29:2372 (November 2003), LR 30:1161 (June 2004), LR 31:2213 (September 2005).

§703. Establishing Eligibility

A. - A.4.g.ii. …

5.a. graduate from an eligible public or nonpublic Louisiana high school or non-Louisiana high school defined in §1701.A.1, 2, or 3; and

i.(a). for students graduating in Academic Year (High School) 2001-2002 and prior, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or
1	Civics (one unit, nonpublic)

Units	Course
1	Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1 credit) Computer/Technology Applications (1 credit) Computer Architecture (1 credit) Computer/Technology Literacy (1/2 credit) Computer Science I (1 credit) Computer Science II (1 credit) Computer Systems and Networking I (1 credit) Computer Systems and Networking II (1 credit) Desktop Publishing (1/2 credit) Digital Graphics and Animation (1/2 credit) Introduction to Business Computer Applications (1 credit) Multimedia Productions (1 credit) Technology Education Computer Applications (1 credit) Telecommunications (1/2 credit) Web Mastering (1/2 credit) Word Processing (1 credit) Independent Study in Technology Applications (1 credit)

(b). for students graduating in Academic Year (High School) 2002-2003 through 2003-2004, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or
1	Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(c). for students graduating in Academic Year (High School) 2004-2005 through 2006-2007, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education constituting a core curriculum as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or
1	Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language

Units	Course
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

(d). Beginning with the graduates of Academic Year (High School) 2007-2008, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for one unit; provided however, that such Agriscience unit shall not be considered a science elective for the purpose of the math or science elective requirement below)
1	An elective from among other math or science subjects listed in this core curriculum
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or
1	Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	Foreign Language, both units in the same language
1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE) or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum). BESE has approved the following courses as computer related for purposes of satisfying the 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1/2 or 1 credit) Business Computer Applications (1/2 or 1 credit) Computer Applications or Computer/Technology Applications (1/2 or 1 credit) Computer Architecture (1/2 or 1 credit) Computer Electronics I (1/2 or 1 credit) Computer Electronics II (1/2 or 1 credit) Computer/Technology Literacy (1/2 or 1 credit) Computer Science I (1/2 or 1 credit) Computer Science II (1/2 or 1 credit) Computer Systems and Networking I (1/2 or 1 credit) Computer Systems and Networking II (1/2 or 1 credit) Desktop Publishing (1/2 or 1 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1/2 or 1 credit) Multimedia Productions or Multimedia Presentations (1/2 or 1 credit) Technology Education Computer Applications (1/2 or 1 credit) Telecommunications (1/2 credit) Web Mastering or Web Design (1/2 credit) Word Processing (1/2 or 1 credit) Independent Study in Technology Applications (1/2 or 1 credit)

A.5.a.ii. - H.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, 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 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64 and 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999 and 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219 and 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330 and 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:2213 (September 2005).

Chapter 11. Rockefeller State Wildlife Scholarship

§1107. Maintaining Eligibility

A. To continue receiving the Rockefeller State Wildlife Scholarship, recipients must meet all of the following criteria:

1. have received the scholarship for not more than seven academic years (five undergraduate and two graduate); and

2. at the close of each academic year (ending with the spring semester or quarter), have earned at least 24 hours total credit during the fall, winter and spring terms at an institution defining 12 semester or eight quarter hours as the minimum for full-time undergraduate status or earn at least 18 hours total graduate credit during the fall, winter and

spring terms at an institution defining nine semester hours as the minimum for full-time graduate status unless granted an exception for cause by LASFAC; and

3. achieve a cumulative grade point average of at least 2.50 as an undergraduate student at the end of each academic year or achieve a cumulative grade point average of at least 3.00 as a graduate student at the end of each academic year; and

4. continue to enroll each subsequent semester or quarter (excluding summer sessions and intersessions) at the same institution unless granted an exception for cause and/or approval for transfer of the award by LASFAC; and

5. continue to pursue a course of study leading to an undergraduate or graduate degree in wildlife, forestry or marine science.

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 22:338 (May 1996), repromulgated LR 24:640 (April 1998), amended LR 24:1909 (October 1998), repromulgated LR 27:1859 (November 2001), amended LR 31:2215 (September 2005).

George Badge Eldredge
General Counsel

0509#008

RULE

Tuition Trust Authority
Office of Student Financial Assistance

START Savings Program Miscellaneous Provisions
(LAC 28:VI.315)

The Louisiana Tuition Trust Authority has amended its START Savings Program Rules (R.S. 17:3091, et seq.)(ST0561R)

Title 28
EDUCATION
Part VI. Student Financial AssistanceCHigher Education SavingsCTuition Trust Authority
Chapter 3. Education Savings Account
§315. Miscellaneous Provisions

A. - B.10. …

11. For the year ending December 31, 2004, the Louisiana Education Tuition and Savings Fund earned an interest rate of 4.72 percent.

12. For the year ending December 31, 2004, the Earnings Enhancements Fund earned an interest rate of 5.12 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), 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 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005).

George Badge Eldredge
General Counsel

0509#009

RULE

Department of Environmental Quality
Office of the Secretary

Brownfields Cleanup Revolving Loan Fund Program
(LAC 33:VI.1101, 1103, 1105, 1107, 1109, 1111, 1113, 1115, 1117, and 1119)(IA005)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation regulations, LAC 33:VI.1101, 1103, 1105, 1107, 1109, 1111, 1113, 1115, 1117, and 1119 (Log #IA005).

This Rule implements the Louisiana Brownfields Cleanup Revolving Loan Fund Program, which was created and authorized by Act 655 of the 2004 Regular Legislative Session. The Rule will provide for eligibility and ranking criteria for applicants and properties, loan procedures, eligible and ineligible costs, and other loan requirements. This loan program will provide below-market-rate interest loans to local government, qualified non-profit, and private entities to clean up brownfields properties. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. This program seeks to promote the cleanup, redevelopment, and reuse of these brownfields properties, thereby returning currently idled, abandoned, and underused properties to productive use. This will, in turn, result in increased jobs, state and local tax revenues, and community revitalization. There are currently estimated to be 450,000 to 600,000 brownfields in the United States, and it is believed that Louisiana has its proportionate share. This loan program will provide an affordable source of funding to assist in the cleanup of these properties. In addition, this funding will complement local brownfields program activities that already exist in the state. The basis and rationale for this rule are to promote the cleanup, redevelopment, and reuse of brownfields throughout the state. Brownfields revolving loan programs have already been used throughout the United States, and also in Louisiana, to successfully promote brownsfields redevelopment.

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 VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation
Chapter 11. Brownfields Cleanup Revolving Loan Fund Program

§1101. Introduction

A. The Louisiana Legislature has found that the cleanup, redevelopment, and reuse of brownfields sites in the state should be encouraged and facilitated for the benefit of the citizens of the state by way of economic development, health, and aesthetics. The legislature has also found that providing loans for the cleanup of brownfields sites will result in benefits to the public by reducing risk to public health and the environment.

B. The purpose of these regulations is to establish procedures for the establishment and operation of a Brownfields Cleanup Revolving Loan Fund Program that will make low-interest loans available to political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities for the cleanup of brownfields properties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

§1103. Authority

A. Act 655 of the 2004 Regular Session of the Louisiana Legislature enacted R.S. 30:2551-2552, which authorize the creation of a Brownfields Cleanup Revolving Loan Fund. This act also authorizes the department to make loans to political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities for the cleanup of brownfields properties.

B. Act 655 of 2004 further provides authority for the department to establish regulations and procedures for the loan program and authorizes political subdivisions, public trusts, quasi-governmental organizations, nonprofit organizations, or private entities to make loans from the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

§1105. Definitions

Applicant any entity that submits an application for a loan in accordance with these regulations.

Bonds bonds, notes, renewal notes, certificates of indebtedness, refunding bonds, interim certificates, debentures, warrants, commercial paper, or other obligations or evidences of indebtedness authorized to be issued by the department.

Brownfields Site real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Such property may also be referred to as a brownfield or as brownfields property.

Department the Department of Environmental Quality.

Eligible Costs those project costs that are reasonable, necessary, and allocable to the project, permitted by appropriate federal and state cost principles and approved in the loan agreement, and that are not prohibited by federal or state regulations or guidance.

Fund the Brownfields Cleanup Revolving Loan Fund.

In-Kind Contributions non-cash third-party contributions made directly to a federally assisted project or program, including donated time and effort, real and nonexpendable personal property, and goods and services that meet the requirements of applicable federal guidance.

Loan a loan of money from the Brownfields Cleanup Revolving Loan Fund.

Nonprofit Organization any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized principally for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

Responsible Person a responsible person as defined in R.S. 30:2285.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

§1107. Eligibility for Participation in the Program

A. Applicant Eligibility. The applicant must meet all of the following requirements to be eligible to participate in the Brownfields Cleanup Revolving Loan Fund Program.

1. The applicant must be authorized to incur debt and enter into legally binding agreements.

2. The applicant must own the brownfields site to be remediated using loan funds prior to the initial disbursement of funds.

3. The applicant must not be a *responsible person* as defined in LAC 33:VI.1105.

4. The applicant must demonstrate the financial ability to repay the loan in a timely fashion.

5. The applicant must not be subject to any unpaid fines or penalties for lack of compliance with environmental laws or regulations at the brownfields site subject to the loan.

6. The applicant must not be subject to any past-due fees owed to the department.

7. The credit history of the applicant must be in good standing.

8. Applicants for loans made from federal brownfields funding sources must meet requirements for such applicants provided in federal guidance.

B. Site Eligibility. All sites must meet the following requirements in order to be eligible and to remain eligible to participate in the Brownfields Cleanup Revolving Loan Fund Program.

1. Only brownfields sites located in the state of Louisiana are eligible.

2. The site must be eligible for participation in the Louisiana Voluntary Remediation Program as provided in LAC 33:VI.Chapter 9, and the applicant must enter the program by submitting a completed voluntary remediation application for the site to the department within 120 days of the execution of the loan agreement, unless an extension is granted by the administrative authority. The site must remain in the Louisiana Voluntary Remediation Program to remain eligible for the loan program. All application and oversight

fees associated with the voluntary remediation shall be paid in a timely fashion in accordance with those regulations.

3. Cleanup of the site shall be accomplished within 18 months of the date of the execution of the loan agreement, unless an extension is granted by the administrative authority.

4. The cleanup of contamination associated with motor fuels underground storage tanks that are eligible for the Louisiana Motor Fuels Underground Storage Tank Trust Fund is not eligible for the loan program.

5. Sites at which only petroleum contamination is present (petroleum-only sites) must meet eligibility requirements for petroleum sites found in federal guidance.

6. Sites at which loans would be funded from federal brownfields funding sources must meet all requirements provided in federal guidance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2217 (September 2005).

§1109. Ineligible and Eligible Costs

A. Ineligible Costs. Loan funds cannot be used for:

1. payment of penalties or fines, or for federal cost-sharing requirements;

2. indirect costs or for any administrative costs such as direct costs associated with grant administration incurred to comply with the Uniform Administrative Requirements for Grants in 40 CFR Part 30 (however, loan funds may be used for programmatic costs);

3. payment of any fees or oversight cost reimbursements required by the department;

4. site acquisition or development/redevelopment and construction activities that are not corrective actions;

5. pre-cleanup activities (i.e., site investigation and identification of the nature and extent of contamination and associated data collection);

6. monitoring and data collection necessary to apply for, or comply with, environmental permits under other state or federal laws, unless such a permit is a required component of the corrective action;

7. ordinary operating expenses of the local government or nonprofit or private organization;

8. personal injury compensation or damages arising out of the project;

9. purchase of any equipment costing more than $5,000;

10. cleanup of a substance that occurs in a natural condition at a site; or

11. any other costs prohibited by federal regulation or guidance.

B. Eligible Costs. Loan funds may be used for:

1. programmatic costs that are integral to achieving the purposes of the loan as described in the most current edition of the federal "Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants" guidance document or its equivalent;

2. preparation of a voluntary remediation application, including development of the voluntary remedial action plan, as described in LAC 33:VI.911.B;

3. remediation of an eligible site pursuant to and in conformance with the Louisiana Voluntary Remediation Program;

4. preparation of a voluntary remedial action report, as described in LAC 33:VI.913.C.1;

5. required public notice, public hearing, and other community involvement activities associated with the remediation of an eligible site; and

6. purchase of environmental insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2218 (September 2005).

§1111. Loan Requirements

A. The maximum loan amount shall be $200,000 per brownfields site and shall not exceed the estimated cost of the project. Under special circumstances this maximum loan amount may be increased by the department. The department may award loans that are less than the total project cost for a brownfields site. Loan amounts cannot be increased after the loan award due to cost overruns or other reasons. The borrower must apply for another loan to get additional funds.

B. The interest rate for loans will be updated by the department as needed and will be less than the current prime interest rate. Loan agreements may provide for reduction or forgiving of interest rates for early repayment of the loan. There shall be no penalties imposed for early repayment of a loan.

C. The term of the loan (the time period over which the loan must be paid back) shall not exceed 20 years from the date of the completion of the project. The actual term for each loan shall be determined by the department and the department may require a shorter loan term based on circumstances. Loan principal and interest repayment schedules shall be set by the department, with the first installment being due within one year of the date of the project's completion.

D. A match (cost-share) of up to 20 percent of the loan amount may be required of the applicant by the department for any loan made. Eligible "in-kind" contributions may be allowed as cost-shares by the department.

E. Applicants must demonstrate their ability to repay the loans. The department may require a loan recipient to provide security or collateral for the loan, including the subject property. A local government or nonprofit applicant may be required to provide evidence of a dedicated revenue source to repay the loan.

F. Applicants subject to oversight by the State Bond Commission must comply with R.S. 30:2552.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2218 (September 2005).

§1113. Loan Application Process

A. The department may choose to accept loan applications on a continuous basis as funding permits or may announce specific application periods for acceptance of loan applications. If the department announces specific application periods, loan applications must be received on or before the deadline set by the department.

B. Applicants for loans shall complete and submit to the department an application package in a format specified by the department, including a Brownfields Cleanup Revolving Loan Fund Application Form that will be provided by the

department. The application package must also include, but is not limited to:

1. a complete description of the project, including the sources and uses of funds, the project schedule, the estimated cost to complete the project, the estimated completion date, the amount of loan funds requested, and the source of other funding, if needed, to complete the project;

2. the last three years of the borrower's financial statements, which shall include the income statement, balance sheet, and cash flow statement, and tax returns;

3. an interim financial statement no more than 90 days old;

4. two years of financial projections, which must include an income statement, balance sheet, cash flow statement, and notes to the financial statements for each year;

5. an approved remedial investigation report as described in LAC 33:VI.911.B.3;

6. a written access agreement providing the department and its authorized representatives full access to the site;

7. an agreement to maintain financial records of the project, to conduct financial audits of these financial records, and to make the records available to the department promptly upon request;

8. if a cost-share is required by the department during this loan application period, a description of how the applicant will provide the cost-share for the project;

9. all information regarding the site required by the department to assist the department in determining eligibility of the site for participation in the loan program;

10. other information regarding the project requested in the application package to assist the department in ranking the project for funding;

11. proof of ownership of the property, or a purchase agreement with the current owner of the property, including evidence of clear title;

12. an appraisal of the estimated value of the property after the voluntary remedial action is complete;

13. discussion and evidence, as requested in the application form, demonstrating the eligibility under these regulations of the applicant and the property for a revolving loan;

14. a comprehensive redevelopment plan describing the future redevelopment and use of the property, including cost estimates for the redevelopment plan, and any economic and community benefits resulting from the cleanup and redevelopment of the property; and

15. other items specified in the application form or otherwise required by the department.

C. The department may request clarification or further information from applicants after receiving the applications. The department also reserves the right to reject incomplete applications.

D. Brownfields Cleanup Revolving Loan Fund applications accepted by the department may be ranked according to prioritization criteria to be established by the department.

E. Applicants will be accepted for loan funding based upon ranking and site-specific criteria, state-wide priorities, funds currently allocated and available for lending, and other relevant factors as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2218 (September 2005).

§1115. Loan Agreements, Closing of Loans, and Disbursement of Loan Funds

A. Upon selection of an applicant to receive a loan, the department will prepare and execute a loan agreement with the applicant. The loan agreement will provide for:

1. the loan term;

2. the repayment schedule;

3. the interest rate;

4. provisions in case of default;

5. a cost-share, if required;

6. timelines and budgets for completing various phases of the project of voluntary remediation;

7. provisions for disbursement of loan funds to the borrower;

8. any required security or collateral for the loan; and

9. other necessary provisions as determined by the department.

B. No loan funds shall be disbursed to the borrower until the loan agreement is executed and until such costs are incurred by the borrower.

C. Disbursement requests shall be of the form and type required by the department and shall be supplemented with copies of all invoices for each cost incurred. The borrower shall maintain complete documentation of all project costs for audit purposes. The borrower shall be responsible for maintaining financial control of the project by carefully reviewing all disbursement requests and supplemental documentation before submitting disbursement requests to the department. The borrower must certify each disbursement request before submittal.

D. Disbursement requests must be received by the date established by the department.

E. The borrower shall promptly remit each disbursement to the firm or individual to whom payment is due, and the borrower is solely responsible for paying those firms or individuals. The department may at its discretion make certain payments directly to such firms or individuals as provided in specific loan agreements.

F. Documentation of project costs paid for with revolving loan funds, as well as disbursement requests and invoices, must record and account for costs separately from any project costs paid or to be paid for from other funding sources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2219 (September 2005).

§1117. Recordkeeping, Confidentiality of Records, and Inspection of Records and Participating Sites

A. The applicant must maintain complete financial and other records as required in the loan application and loan agreement, and make them available promptly to the department upon request as provided in Subsection B of this Section. Financial records must account for and record costs and expenditures to be funded with revolving loan funds separately from costs and expenditures to be funded from other funding sources. Recordkeeping shall meet the

requirements of applicable federal guidance, and all records shall be kept by the borrower until the loan is completely repaid or at least three years after the cleanup is completed, whichever is later.

B. From the time of first submission of the loan application, throughout all stages of remediation, and at any time during the applicant's participation in the loan program, authorized representatives of the department shall have the right to inspect any and all projects, and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which the application was made. The department shall further have the same right to inspect any and all books, accounts, records, contracts or other instruments, documents, or information possessed by the applicant or entity representing the applicant that relates to the receipt, deposit, or expenditure of loan funds or to the planning, design, construction, and operation of any facilities that may have been constructed as a result of such loan funds. By submittal of a revolving loan fund application, the applicant shall be deemed to consent and agree to the right of reasonable inspection and the applicant shall allow the department all necessary and reasonable access and opportunity for such purposes.

C. Any requests for confidentiality of any documents submitted by an applicant or loan recipient must be handled in accordance with and will be governed by LAC 33.I.Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2219 (September 2005).

§1119. Prioritization of Applicants and Sites to Receive Loan Funds

A. Applicants may be prioritized for receipt of loan funds based on the ranking criteria in this Section. These factors may be further elaborated, refined, or detailed in the loan application.

B. The criteria (not in order of importance) for ranking applicants are as follows:

1. the potential of the site for redevelopment and productive reuse;
2. the potential for creation of temporary and permanent jobs and/or increased state and local tax revenues by the cleanup, redevelopment, and reuse of the site;
3. the potential of the project to create greenspace;
4. the ability of the applicant to repay the loan;
5. other cleanup funds available to the applicant to supplement revolving loan fund dollars;
6. funds available to the applicant to redevelop the property;
7. the degree of need for community revitalization in the area surrounding the site, as evidenced by significant deterioration, job loss, majority low-income households, or other factors as determined by the department;
8. the estimated value of the remediated property as compared to the estimated cost of the cleanup of that property; and
9. other ranking factors provided by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and in particular R.S. 30:2551-2552.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2220 (September 2005).

Herman Robinson, CPM
Executive Counsel

0509#053

RULE

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

Home Health Program—Ambulatory Assistance
(LAC 50:XIII.Chapter 133)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XIII.13301-13305 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 provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health
Subpart 3. Equipment, Supplies, and Appliances
Chapter 133. Ambulatory Assistance

§13301. Canes and Crutches

A. Requests for canes (wooden or metal), quad canes (four-prong) and all types of crutches may be approved if the recipient's condition impairs ambulation and he/she has a potential for ambulation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2220 (September 2005).

§13303. Walkers and Walker Accessories

A. A standard walker and related accessories may be covered if all of the following criteria are met:

1. it is prescribed by a physician for a recipient with a medical condition that impairs ambulation;
2. the recipient has a potential for ambulation; and
3. he/she has a need for greater stability and security than can be provided by a cane or crutches.

B. Wheeled Walker. A wheeled walker is a walker with two, three, or four wheels. A wheeled walker shall be approved only when the recipient is unable to use a standard walker due to severe neurological disorders, restricted use of one hand, or to other medically related reasons. The request must contain supporting documentation from the prescribing physician that substantiates why a wheeled walker is needed rather than a standard walker.

C. Heavy Duty Walker. A heavy duty walker may be approved for patients who meet the criteria for a standard walker and who weigh more than 300 pounds.

D. Heavy Duty, Multiple Braking System, Variable Wheel Resistance Walker

1. A heavy duty, multiple braking system, variable wheel resistance walker is a four-wheeled, adjustable height,

folding-walker that has all of the following characteristics:

a. capable of supporting individuals who weigh more than 350 pounds; and

b. has hand operated brakes that:

i. cause the wheels to lock when the hand levers are released;

ii. can be set so that either one or both can lock the wheels; and

iii. are adjustable so that the individual can control the pressure of each hand brake;

c. there is an additional braking mechanism on the front crossbar; and

d. at least two wheels have brakes that can be independently set through tension adjustability to give varying resistance.

2. A heavy duty, multiple braking system, variable wheel resistance walker is considered medically necessary for individuals whose weight is greater than 350 pounds, and who meet coverage criteria for a standard walker, and who are unable to use a standard walker due to a severe neurological disorder or other condition causing the restricted use of one hand. Obesity, by itself, is not considered a medically necessary indication for this walker.

E. Leg Extensions. Leg extensions are considered medically necessary for individuals 6 feet tall or more.

F. Armrests. Armrest attachments are considered medically necessary when the individual's ability to grip is impaired.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2220 (September 2005).

§13305. Non-Covered Items

A. The following items shall not be covered by Medicaid:

1. Walker with Enclosed Frame. A walker with enclosed frame is a folding wheeled walker that has a frame that completely surrounds the patient and an attached seat in the back.

2. Enhancement Accessories. An enhancement accessory is one that does not contribute significantly to the therapeutic function of the walker, cane or crutch. It may include, but is not limited to:

a. style;

b. color;

c. hand operated brakes (other than those described for a heavy duty, multiple braking system, variable wheel resistance walker);

d. seat attachments; and

e. tray attachments or baskets (or equivalent).

3. Walking Belts. Walking belts is a belt used to support and guide the individual in walking.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2221 (September 2005).

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

0509#064

RULE

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

Intermediate Care Facilities for the Mentally Retarded
(LAC 50:VII.Chapters 301-331)

Editor's Note: The following Chapters have been re-codified and are being repromulgated to show current placement.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities for the Mentally Retarded

Chapter 301. General Provisions

§30101. Foreword

A. The ICF/MR standards for payment specify the requirements of federal and state law and regulations governing services provided by intermediate care facilities for the mentally retarded and persons with other developmental disabilities (ICF/MR).

B. The Medicaid Program is administered by the Louisiana Department of Health and Hospitals (DHH) in cooperation with other federal and state agencies.

C. Standards are established to ensure minimum compliance under the law, equity among those served, provision of authorized services, and proper disbursement. If there is a conflict between material in these standards and the federal and state laws or policies governing the program, the state laws or policies governing the program have precedence. These standards provide the ICF/MR with information necessary to fulfill the provider enrollment contract with the agency. It is the ICF/MR facility's responsibility to keep these standards current. The standards are the basis for surveys by federal and state agencies, are part of the enrollment contract, and are necessary for the ICF/MR to remain in compliance with federal and state laws.

D. Monitoring of an ICF/MR's compliance with state and federal regulations is the responsibility of DHH's Bureau of Health Services Financing (BHFS).

E. The Bureau of Health Services Financing (BHSF) Health Standards Section (HSS) is responsible for determining an ICF/MR's compliance with state licensing requirements and compliance with specific Title XIX certification requirements which include physical plant, staffing, dietary, pharmaceuticals, active treatment, and other standards. Minimum licensure requirements for ICF/MRs are covered in the booklet entitled *Licensing Requirements for Residential Care Providers* and Subpart I of the *Code of Federal Regulations*, Chapter 42:483.400-483.480.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:676 (April 1999), repromulgated LR 31:2221 (September 2005).

§30103. Definitions and Acronyms Specific to Mental Retardation and Other Developmental Disabilities

A. Definitions regarding Mental Retardation are adopted from the American Association on Mental Deficiency *Manual on Terminology and Classification in Mental Retardation*, 1977 Edition.

B. Definitions for Developmental Disabilities are taken from the 1983 amended R.S. 28:330-444 based on Public Law 95-602.

C. All clients must meet the criteria for mental retardation and other developmental disabilities in order to qualify for Title XIX reimbursement for ICF/MR services.

AAMR American Association of Mental Retardation (formerly the AAMD American Association of Mental Deficiency).

Abuse the infliction of physical or mental injury to a client or causing a client's deterioration to such an extent that his/her health, moral or emotional well-being is endangered. Examples include, but are not limited to: sexual abuse, exploitation or extortion of funds or other things of value.

Active Treatment an aggressive and consistent program of specialized and generic training, treatment, health and related services directed toward the acquisition of behaviors necessary for the client to function with as much self determination and independence as possible and the prevention and deceleration of regression or loss of current optimal functional status.

Acuity Factor—an adjustment factor which will modify the direct care portion of the Inventory for Client and Agency Planning (ICAP) rate based on the ICAP level for each resident.

Adaptive Behavior the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected for his age and cultural group. Since these exceptions vary for different age groups, deficits in adaptive behavior will vary at different ages.

Administrative and Operating Costs—include:

a. in-house and contractual salaries;

b. benefits;

c. taxes for administration and plant operation maintenance staff;

d. utilities;

e. accounting;

f. insurances;

g. maintenance staff;

h. maintenance supplies;

i. laundry and linen;

j. housekeeping; and

k. other administrative type expenditures.

Agency See Medicaid Agency.

Ambulatory an ability to walk about.

ANSI American National Standards Institute.

Applicant an individual whose written application for Medicaid has been submitted to the agency but whose eligibility has not yet been determined.

ART accredited record technician.

Attending Physician a physician currently licensed by the Louisiana State Board of Medical Examiners, designated by the client, family, agency, or responsible party as responsible for the direction of overall medical care of the client.

Autism a condition characterized by disturbance in the rate of appearance and sequencing of developmental milestones:

a. abnormal responses to sensations;

b. delayed or absent speech and language skills while specific thinking capabilities may be present; and

c. abnormal ways of relating to people and things.

BHSF Bureau of Health Services Financing. See *Health Services Financing*.

Board Certified Social Worker (BCSW) a person holding a Master of Social Work (MSW) degree who is licensed by the Louisiana State Board of Certified Social Work Examiners.

Capacity for Independent Living the ability to maintain a full and varied life in one's own home and community.

Capital Costs—include:

a. depreciation;

b. interest expense on capital assets;

c. leasing expenses;

d. property taxes; and

e. other expenses related to capital assets.

Care Related Costs—include in-house and contractual salaries, benefits, taxes, and supplies that help support direct care but do not directly involve caring for the patient and ensuring their well being (e.g., dietary and educational). Care related costs would also include personal items, such as clothing, personal hygiene items (soap, toothpaste, etc), hair grooming, etc.

Cerebral Palsy a permanently disabling condition resulting from damage to the developing brain, which may occur before, during or after birth and results in loss or impairment of control over voluntary muscles.

Certification a determination made by the Department of Health and Hospitals (DHH) that an ICF/MR meets the necessary requirements to participate in Louisiana as a provider of Title XIX (Medicaid) Services.

Change in Ownership (CHOW) any change in the legal entity responsible for the operation of an ICF/MR.

Chief Executive Officer (CEO) an individual licensed, currently registered, and engaged in the day to day administration/management of an ICF/MR.

Client an applicant for or recipient of Title XIX (Medicaid) ICF/MR services.

Code of Federal Regulations (CFR) the regulations published by the federal government. Section 42 includes regulations for ICF/MRs.

Comprehensive Functional Assessment identifies the client's need for services and provides specific information about the client's ability to function in different environments, specific skills or lack of skills, and how function can be improved, either through training, environmental adaptations, or provision of adaptive, assistive, supportive, orthotic, or prosthetic equipment.

Developmental Disabilities (DD) severe, chronic disabilities which are attributable to mental retardation, cerebral palsy, autism, epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation. This condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of mental retardation, and requires treatment or

services similar to those required for MR/DD are manifested before the person reaches age 22 and are likely to continue indefinitely.

Developmental Period a period from birth to before a person reaches age 22.

DHH—Department of Health and Hospitals or its designee.

DHHS the federal Department of Health and Human Services in Washington, D.C.

Direct Care Costs—consist of all costs related to the direct care interaction with the patient. *Direct care costs* include:

a. in-house and contractual salaries;
b. benefits; and
c. taxes for all positions directly related to patient care, including:
i. medical;
ii. nursing;
iii. therapeutic and training;
iv. ancillary in-house services; and
v. recreational.

Dual Diagnosis clients who carry diagnoses of both mental retardation and mental illness.

Enrollment process of executing a contract with a licensed and certified ICF/MR provider for participation in the Medical Assistance Program. Enrollment includes the execution of the provider agreement and assignment of the provider number used for payment.

Epilepsy disorder of the central nervous system which is characterized by repeated seizures which are produced by uncontrolled electrical discharges in the brain.

Facility an intermediate care facility for the mentally retarded and developmentally disabled.

Fiscal Intermediary the private fiscal agent with which DHH contracts to operate the Medicaid Management Information System. It processes the Title XIX (Medicaid) claims for services provided under the Medical Assistance Program and issues appropriate payment(s).

General Intellectual Functioning results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose.

HCFA Health Care Financing Administration.

Health Services Financing, Bureau of (BHSF) a division of DHH responsible for administering, overseeing, and monitoring the state's Medicaid Program.

HSS Health Standards Section within BHSF, the section responsible for licensing, certifying and enrolling ICFs/MR.

ICAP—Inventory for Client and Agency Planning—A standardized instrument for assessing adaptive and maladaptive behavior and includes an overall service score. This ICAP service score combines adaptive and maladaptive behavior scores to indicate the overall level of care, supervision or training required.

ICAP Service Level—ranges from 1 to 9 and indicates the service need intensity. The lower the score the greater is the client need.

ICAP Service Score—indicates the level of service intensity required by an individual, considering both adaptive and maladaptive behavior.

NOTE: The relationship between the service level and service score for ICAP support levels is as follows.

ICAP Relationship Graph		
ICAP Service Level	**ICAP Service Score**	**ICAP Support Levels**
		Pervasive+
1	1-19	Pervasive
2	20-29	Extensive
3	30-39	
4	40-49	Limited
5	50-59	
6	60-69	
7	70-79	Intermittent
8	80-89	
9	90+	

Index Factor—this factor will be based on the *Skilled Nursing Home without Capital Market Basket Index* published by Data Resources Incorporated or a comparable index if this index ceases to be published.

Individual Habilitation Plan (IHP) the written ongoing program of services developed for each client by an interdisciplinary team in order for that client to achieve or maintain his/her potential. The plan contains specific, measurable goals, objectives and provides for data collection.

Individual Plan of Care (IPC) same as Individual Habilitation Plan.

Individual Program Plan (IPP) same as Individual Habilitation Plan.

Individual Service Plan (ISP) same as Individual Habilitation Plan.

Interdisciplinary Team (IDT) a group of individuals representing the different disciplines in the formulation of a client's individual habilitation plan. That team meets at least annually to develop and review the plans, more frequently if necessary.

Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR) same as facility for the mentally retarded or persons with related conditions.

I.Q. Intelligence Quotient.

Learning general cognitive competence—the ability to acquire new behaviors, perceptions, and information and to apply previous experiences in new situations.

Legal Status a designation indicative of an individual's competency to manage their affairs.

Level of Care (LOC) service needs of the client based upon his/her comprehensive functional status.

Licensed a determination by the Louisiana Department of Health and Hospitals, Bureau of Health Service Financing, that an ICF/MR meets the state requirements to participate in Louisiana as a provider of ICF/MR services.

Living Unit a place where a client lives including sleeping, training, dining and activity areas.

LPN licensed practical nurse.

LSC life safety code.

LTC long term care.

Major Life Activities any one of the following activities or abilities:

a. self-care;
b. understanding and use of language;
c. learning;

d. mobility;
e. self-direction;
f. capacity for independent living.

Measurable Outcomes a standard or goal by which performance is measured and evaluated.

Mechanical Support a device used to achieve proper body position or balance.

Medicaid medical assistance provided according to the State Plan approved under Title XIX of the Social Security Act.

Medicaid Agency the single state agency responsible for the administration of the Medical Assistance Program (Title XIX). In Louisiana, the Department of Health and Hospitals is the single state agency.

Medicaid Management Information System (MMIS) the computerized claims processing and information retrieval system which includes all ICF/MR providers eligible for participation in the Medical Assistance Program. This system is an organized method for payment for claims for all Title XIX Services.

Medical Assistance Program (MAP) another name for the Medicaid Program.

Medicare the federally administered Health Insurance program for the aged, blind and disabled under the Title XVIII of the Social Security Act.

Medicare Part A the hospital insurance program authorized under Part A of Title XVIII of the Social Security Act.

Medicare Part B the supplementary medical insurance program authorized under Part B of Title XVIII of the Social Security Act.

Mental Retardation (MR) significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.

NOTE: It shall be emphasized that a finding of low I.Q. is never by itself sufficient to make the diagnosis of mental retardation or in evaluating its severity. A low I.Q. shall serve only to help in making a clinical judgment regarding the client's adaptive behavioral capacity. This judgment also includes present functioning, including academic and vocational achievement, motor skills, and social and emotional maturity.

Mobil Nonambulatory the inability to walk without assistance, but the ability to move from place to place with the use of a device such as a walker, crutches, wheelchair or wheeled platform.

Mobility motor development and ability to:
a. use fine and gross motor skills;
b. move the extremities at will.

Neglect the failure to provide proper or necessary medical care, nutrition or other care necessary for a client's well being.

New Facility an ICF/MR newly opened or recently began participating in the Medical Assistance Program.

Nonambulatory the inability to walk without assistance.

Nursing Facility or Facility health care facilities such as a private home, institution, building, residence, or other place which provides maintenance, personal care, or nursing services for persons who are unable to properly care for themselves because of illness, physical infirmity or age. These facilities serve two or more persons who are not related by blood or marriage to the operator and may be operated for profit or nonprofit.

Office for Citizens with Developmental Disabilities (OCDD) the office within DHH responsible for programs serving the MR/DD population.

Operational admission of at least one client, completion of functional assessments(s) and development of individual program plan(s) for the client(s); and implementation of the program plan(s) in order that the facility actually demonstrate the ability, knowledge, and competence to provide active treatment.

Overall Plan of Care (OPC) see Individual Habilitation Plan.

Pass through Cost Component—includes the provider fee.

Peer Group—the administrative and operating per diem rate and the capital per diem rate are tiered based on peer group size. Peer groups are as follows:
a. 1 - 8 beds;
b. 9 - 15 beds;
c. 16 - 32 beds;
d. 33 or more beds.

Provider any individual or entity enrolled to furnish Medicaid services under a provider agreement with the Medicaid agency.

Qualified Mental Retardation Professional (QMRP) a person who has specialized training and at least one year or more of experience in treating and/or working directly with and in direct contact with the Mentally Retarded clients. To qualify as a QMRP a person must meet the requirements of 42 CFR 483.430.

Rate Year—a one-year period corresponding to the state fiscal year from July 1 through June 30.

Rebasing—recalculation of the per diem rate components using the latest available audited or desk reviewed cost reports.

Recipient an individual who has been determined eligible for Medicaid.

Registered Nurse (RN) a nurse currently registered and licensed by the Louisiana State Board of Nursing.

Representative Payee a person designated by the Social Security Administration to receive and disburse benefits in the best interest of and according to the needs of the beneficiary.

Responsible Party a person authorized by the client, agency or sponsor to act as an official delegate or agent in dealing with the Department of Health and Hospitals and/or the ICF/MR.

Self-Care daily activities which enable a person to meet basic life needs for food, hygiene, appearance and health.

Self-Direction management and control over one's social and personal life and the ability to make decisions that affect and protect one's own interests. A substantial functional limitation in self-direction would require a person to need assistance in making independent decisions concerning social and individual activities and/or in handling personal finances and/or in protecting his own self-interest.

Significant Assistance help needed at least one-half of the time for one activity or a need for some help in more than one-half of all activities normally required for self-care.

Significantly Sub-Average for purposes of certification for ICF/MR an I.Q. score of below 70 on the Wechsler, Standford-Binet, Cattell, or comparable test will be considered to establish significantly sub-average intellectual functioning.

SNF Skilled Nursing Facility.

Sponsor an adult relative, friend, or guardian of the client who has a legitimate interest in or responsibility for the client's welfare. Preferably, this person is designated on the admission forms as "responsible party."

Substantial Functional Limitation a condition that limits a person from performing normal life activities or makes it unsafe for a person to live alone to such an extent that assistance, supervision, or presence of a second person is required more than half of the time.

Support Levels—describe the levels of support needed by individuals with mental retardation and other developmental disabilities. The five descriptive levels of service intensity using the ICAP assessment are summarized in Subparagraphs a–e below.

a. Intermittent—supports on an as needed basis. Characterized as episodic in nature, the person does not always need the support(s), or short-term supports needed during life-span transition (e.g., job loss or an acute medical crisis). Intermittent supports may be high or low intensity when provided.

b. Limited—supports characterized by consistency over time, time-limited but not of an intermittent nature, may require fewer staff members and less costs than more intense levels of support (e.g., time-limited employment training or transitional supports during the school to adult provided period).

c. Extensive—supports characterized by regular involvement (e.g., daily) in at least some environment (such as work or home) and not time-limited (e.g., long term support and long-term home living support).

d. Pervasive—supports characterized by their constancy, high intensity; provided across environments; potential life-sustaining nature. Pervasive supports typically involve more staff members and intrusiveness than do extensive or time-limited supports.

e. Pervasive Plus—a time-limited specific assignment to supplement required Level of Need services or staff to provide life sustaining complex medical care or to supplement required direct care staff due to dangerous life threatening behavior so serious that it could cause serious physical injury to self or others and requires additional trained support staff to be at "arms length" during waking hours.

Title XIX see Medicaid.

Training and Habilitation Services services intended to aid the intellectual, sensorimotor and emotional development of a client as part of overall plans to help the individual function at the greatest physical, intellectual, social and vocational level he/she can presently or potentially achieve.

Understanding and Use of Language communication involving both verbal and nonverbal behavior enabling the individual both to understand others and to express ideas and information to others.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:676 (April 1999), LR 31:1590 (July 2005), repromulgated LR 31:2222 (September 2005).

Chapter 303. Provider Enrollment

§30301. General Provisions

A. Scope

1. The standards set forth in this and subsequent sections comply with the Title XIX requirements of the amended Social Security Act. That Act sets the standards for the care, treatment, health, safety, welfare and comfort of Medical Assistance clients in facilities providing ICF/MR services.

2. These standards apply to ICF/MRs certified and enrolled by the Louisiana Department of Health and Hospitals (DHH) for vendor participation.

3. These standards supplement current licensing requirements applicable to ICF/MRs. Any infraction of these standards may be considered a violation of the provider agreement between DHH and the ICF/MR.

4. In the event any of these standards are not maintained, DHH will determine whether facility certification will continue with deficiencies as is allowed under Title XIX regulations or whether termination of the provider agreement is warranted. Although vendor payment will not be suspended during the determination period, deficiencies which may affect the health, safety, rights and welfare of Medical Assistance clients must be corrected expeditiously in order for the ICF/MR to continue to participate.

5. If a certified ICF/MR is found to have deficiencies which immediately jeopardize the health, safety, rights and welfare of its Medical Assistance clients, DHH may initiate proceedings to terminate the ICF/MR's certification. In the event of less serious deficiencies, DHH may impose interim sanctions (see Chapter 323, Sanctions).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 42 CFR 442- 483.400 and 435.1008.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:682 (April 1999), repromulgated LR 31:2223 (September 2005).

§30303. General Admission and Funding

A. Capacity. The ICF/MR will admit only the number of individuals that does not exceed its rated capacity as determined by the BHSF's HSS and its capacity to provide adequate programming.

B. Admission Requirements. Except on a short term emergency basis, an ICF/MR may not admit individuals as clients unless their needs can be met and an interdisciplinary professional team has determined that admission is the best available plan for them. The team must do the following:

1. conduct a comprehensive evaluation of each individual that covers physical, emotional, social and cognitive factors; and

2. perform the following tasks prior to admission:

a. define the individual's need for service without regard to the availability of those services; and

b. review all appropriate programs of care, treatment, and training and record the findings;

3. ensure that the ICF/MR takes the following action if admission is not the best plan but the individual must nevertheless be admitted:

a. clearly acknowledges that admission is inappropriate; and

b. initiates plans to actively explore alternatives.

C. Prohibitions on Federal Financial Participation

1. Federal funds in the Title XIX ICF/MR program are not available for clients whose individual treatment plans are totally or predominately vocational and/or educational. ICF/MR services are designed essentially for those individuals diagnosed as developmentally disabled; having developmental lags which are considered amendable to treatment in a 24-hour managed care environment where they will achieve maximum growth. Services to treat educational and vocational deficits are available at the community level while the client lives in his own home or in another community level placement and are not considered amendable to treatment in a 24-hour managed care environment.

2. Admissions through the Court System

a. Court ordered admissions do not guarantee Medicaid vendor payment to a facility. A court can order that a client be placed in a particular facility but cannot mandate that the services be paid for by the Medicaid program.

b. Incarcerated individuals are not eligible for Medicaid. The only instance in which such an individual may qualify is if he/she is paroled or released on medical furlough.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 42 CFR 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:682 (April 1999), repromulgated LR 31:2225 (September 2005).

§30305. Program Enrollment

A. An ICF/MR may enroll for participation in the Medical Assistance Program (Title XIX) when all the following criteria have been met:

1. the ICF/MR has received Facility Need Review approval from DHH;

2. the ICF/MR has received approval from DHH/OCDD;

3. the ICF/MR has completed an enrollment application for participation in the Medical Assistance Program;

4. the ICF/MR has been surveyed for compliance with federal and state standards, approved for occupancy by the Office of Public Health (OPH) and the Office of the State Fire Marshal, and has been determined eligible for certification on the basis of meeting these standards; and

5. the ICF/MR has been licensed and certified by DHH.

B. Procedures for Certification of New ICF/MRs. The following procedures must be taken in order to be certified as a new ICF/MR.

1. The ICF/MR shall apply for a license and certification.

2. DHH shall conduct or arrange for surveys to determine compliance with Title XIX, Title VI (Civil Rights), Life Safety, and Sanitation Standards.

3. Facilities must be operational a minimum of two weeks (14 calendar days) prior to the initial certification survey. Facilities are not eligible to receive payment prior to the certification date.

a. *Operational* is defined as admission of at least one client, completion of functional assessment and development of individual program plan for each client; and implementation of the program plan(s) in order for the facility to actually demonstrate the ability, knowledge, and competence to provide active treatment.

b. Fire and health approvals must be obtained from the proper agencies prior to a client's admission to the facility.

c. The facility must comply with all standards of the State of Louisiana licensing requirements for residential care providers.

d. A certification survey will be conducted to verify that the facility meets all of these requirements.

4. A new ICF/MR shall be certified only if it is in compliance with all conditions of participation found in 42 CFR 442 and 42 CFR 483.400 et seq.

5. The effective date of certification shall be no sooner than the exit date of the certification survey.

C. Certification Periods

1. DHH may certify an ICF/MR which fully meets applicable requirements for a maximum of 12 months.

2. Prior to the agreement expiration date, the provider agreement may be extended for up to two months after the agreement expiration date if the following conditions are met:

a. the extension will not jeopardize the client's health, safety, rights and welfare; and

b. the extension is needed to prevent irreparable harm to the ICF/MR or hardship to its clients; or

c. the extension is needed because it is impracticable to determine whether the ICF/MR meets certification standards before the expiration date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 42 CFR 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:682 (April 1999), repromulgated LR 31:2226 (September 2005).

§30307. Ownership

A. Disclosure. All participating Title XIX ICF/MRs are required to supply the DHH Health Standards Section with a completed HCFA Form 1513 (Disclosure of Ownership) which requires information as to the identity of the following individuals:

1. each person having a direct or indirect ownership interest in the ICF/MR of 5 percent or more;

2. each person owning (in whole or in part) an interest of 5 percent or more in any property, assets, mortgage, deed of trust, note or other obligation secured by the ICF/MR;

3. each officer and director when an ICF/MR is organized as a corporation;

4. each partner when an ICF/MR is organized as a partnership;

5. within 35 days from the date of request, each provider shall submit the complete information specified by the BHSF/HSS regarding the following:

a. the ownership of any subcontractor with whom this ICF/MR has had more than $25,000 in business transactions during the previous 12 months; and

b. information as to any significant business transactions between the ICF/MR and the subcontractor or wholly owned suppliers during the previous five years.

B. The authorized representative must sign the provider agreement.

1. If the provider is a nonincorporated entity and the owner does not sign the provider agreement, a copy of power of attorney shall be submitted to the DHH/HSS showing that the authorized representative is allowed to sign on the owner's behalf.

2. If one partner signs on behalf of another partner in a partnership, a copy of power of attorney shall be submitted to the DHH/HSS showing that the authorized representative is allowed to sign on the owner's behalf.

3. If the provider is a corporation, the board of directors shall furnish a resolution designating the representative authorized to sign a contract for the provision of services under DHH's state Medical Assistance Program.

C. Change in Ownership (CHOW)

1. A Change in Ownership (CHOW) is any change in the legal entity responsible for the operation of the ICF/MR.

2. As a temporary measure during a change of ownership, the BHSF/HSS shall automatically assign the provider agreement and certification, respectively to the new owner. The new owner shall comply with all participation prerequisites simultaneously with the ownership transfer. Failure to promptly complete with these prerequisites may result in the interruption of vendor payment. The new owner shall be required to complete a new provider agreement and enrollment forms referred to in Continued Participation. Such an assignment is subject to all applicable statutes, regulations, terms and conditions under which it was originally issued including, but not limited to, the following:

a. any existing correction action plan;

b. any expiration date;

c. compliance with applicable health and safety standards;

d. compliance with the ownership and financial interest disclosure requirements;

e. compliance with Civil Rights requirements;

f. compliance with any applicable rules for Facility Need Review;

g. acceptance of the per diem rates established by DHH/BHSF's Institutional Reimbursement Section; and

h. compliance with any additional requirements imposed by DHH/BHSF/HSS.

3. For an ICF/MR to remain eligible for continued participation after a change of ownership, the ICF/MR shall meet all the following criteria:

a. state licensing requirements;

b. all Title XIX certification requirements;

c. completion of a signed provider agreement with the department;

d. compliance with Title VI of the Civil Rights Act; and

e. enrollment in the Medical Management Information system (MMIS) as a provider of services.

4. A facility may involuntarily or voluntarily lose its participation status in the Medicaid Program. When a facility loses its participation status in the Medicaid Program, a minimum of 10 percent of the final vendor payment to the facility is withheld pending the fulfillment of the following requirements:

a. submission of a limited scope audit of the client's personal funds accounts with findings and recommendations by a qualified accountant of the facility's choice to the department's Institutional Reimbursement Section:

i. the facility has 60 days to submit the audit findings to Institutional Reimbursement once it has been notified that a limited scope audit is required;

ii. failure of the facility to comply with the audit requirement is considered a Class E violation and will result in fines as outlined in Chapter 323, Sanctions;

b. the facility's compliance with the recommendations of the limit scope audit;

c. submittal of an acceptable final cost report by the facility to Institutional Reimbursement;

d. once these requirements are met, the portion of the payment withheld shall be released by the BHSF's Program Operations Section.

5. Upon notification of completion of the ownership transfer and the new owner's licensing, DHH/HSS will notify the fiscal intermediary regarding the effective dates of payment and to whom payment is to be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 42 CFR 420.205, 440.14, 442.15, 455.100, 455.101, 455.102, and 455.103.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:682 (April 1999), repromulgated LR 31:2226 (September 2005).

§30309. Provider Agreement

A. In order to participate as a provider of ICF/MR services under Title XIX, an ICF/MR must enter into a provider agreement with DHH. The provider agreement is the basis for payments by the Medical Assistance Program. The execution of a provider agreement and the assignment of the provider's Medicaid vendor number is contingent upon the following criteria.

1. Facility Need Review Approval Required. Before the ICF/MR can enroll and participate in Title XIX, the Facility Need Review Program must have approved the need for the ICF/MR's enrollment and participation in Title XIX. The Facility Need Review process is governed by Department of Health and Hospitals regulations promulgated under authority of Louisiana R.S. 40:2116.

a. The approval shall designate the appropriate name of the legal entity operating the ICF/MR.

b. If the approval is not issued in the appropriate name of the legal entity operating the ICF/MR, evidence shall be provided to verify that the legal entity that obtained the original Facility Need Review approval is the same legal entity operating the ICF/MR.

2. The ICF/MR's Medicaid Enrollment Application. The ICF/MR shall request a Title XIX Medicaid enrollment packet from the Medical Assistance Program Provider Enrollment Section. The information listed below shall be returned to that office as soon as it is completed:

a. two copies of the Provider Agreement Form with the signature of the person legally designated to enter into the contract with DHH;

b. one copy of the Provider Enrollment Form (PE 50) completed in accordance with accompanying instructions and signed by the administrator or authorized representative;

c. one copy of the Title XIX Utilization Review Plan Agreement Form showing that the ICF/MR accepts DHH's Utilization Review Plan;

d. copies of information and/or legal documents as outlined in §30307 (Ownership).

3. The Effective Date of the Provider Agreement. The ICF/MR must be licensed and certified by the BHSF/HSS in accordance with provisions in 42 CFR 442.100-115 and provisions determined by DHH. The effective date of the provider agreement shall be determined as follows.

a. If all federal requirements (health and safety standards) are met on the day of the BHSF/HSS survey, then the effective date of the provider agreement is the date the on-site survey is completed or the day following the expiration of a current agreement.

b. If all requirements are specified in Subparagraph a above are not met on the day of the BHSF/HSS survey, the effective date of the provider agreement is the earliest of the following dates:

i. the date on which the provider meets all requirements; or

ii. the date on which the provider submits a corrective action plan acceptable to the BHSF/HSS; or

iii. the date on which the provider submits a waiver request approved by the BHSF/HSS; or

iv. the date on which both Clause ii and Clause iii above are submitted and approved.

4. The ICF/MR's "Per Diem" Rate. After the ICF/MR facility has been licensed and certified, a per diem rate will be issued by the department.

5. Provider Agreement Responsibilities. The responsibilities of the various parties are spelled out in the Provider Agreement Form. Any changes will be promulgated in accordance with the Administrative Procedure Act.

6. Provider Agreement Time Periods. The provider agreement shall meet the following criteria in regard to time periods.

a. It shall not exceed 12 months.

b. It shall coincide with the certification period set by the BHSF/HSS.

c. After a provider agreement expires, payment may be made to an ICF/MR for up to 30 days.

d. The provider agreement may be extended for up to two months after the expiration date under the following conditions:

i. it is determined that the extension will not jeopardize the client's health, safety, rights and welfare; and

ii. it is determined that the extension is needed to prevent irreparable harm to the ICF/MR or hardship to its clients; or

iii. it is determined that the extension is needed because it is impracticable to determine whether the ICF/MR meets certification standards before the expiration date.

7. Tuberculosis (TB) Testing as Required by the OPH. All residential care facilities licensed by DHH shall comply with the requirements found in LAC 51:II.Chapter 5 regarding screening for communicable disease of employees, residents, and volunteers whose work involves direct contact with clients. For questions regarding TB testing, contact the local office of Public Health.

8. Criminal History Checks. Effective July 15, 1996, the Office of State Police will perform criminal history checks on nonlicensed personnel of health care facilities, in accordance with R.S. 40:1300.51-R.S. 40:1300.56.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and 42 CFR 431.107, 442.10, 442.12, 442.13, 442.15, 442.16, 442.100 and 442.101.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:679 (April 1999), repromulgated LR 31:2227 (September 2005).

Chapter 305. Admission Review

§30501. Admission Process

A. ICF/MRs will be subject to a review of each client's need for ICF/MR services.

B. Interdisciplinary Team (ID Team). Before admission to an ICF/MR, or before authorization for payment, an interdisciplinary team of health professionals will make a comprehensive medical, social and psychological evaluation of each client's need for care in the ICF/MR.

1. Other professionals as appropriate will be included on the team, and at least one member will meet the definition of Qualified Mental Retardation Professional (QMRP) as stated in these standards.

2. Appropriate participation of nursing services on this team should be represented by a Louisiana licensed nurse.

C. Exploration of Alternative Services. If the comprehensive evaluations recommend ICF/MR services for a client whose needs could be met by alternative services that are currently unavailable, the ICF/MR will enter this fact in the client's record and begin to look for alternative services.

D. ICF/MR Submission of Data

1. Evaluative data for medical certification for ICF/MR level of care will be submitted to the appropriate regional Health Standards Office on each client. This will include the following information:

a. initial application;

b. applications for clients transferring from one ICF/MR to another;

c. applications for clients transferring from an acute care hospital to an ICF/MR;

d. applications for clients who are patients in a mental health facility; and

e. applications for clients already in an ICF/MR program.

2. Time Frames for Submission of Data. A complete packet of admission information must be received by BHSF/HSS within 20 working days following the completion of the ISP for newly admitted clients.

a. Notice within the 20-day time frame will also be required for readmissions and transfers.

b. If an incomplete packet is received, denial of certification will be issued with the reasons(s) for denial.

c. If additional information is subsequently received within the initial 20-working-day time frame, and the client meets all requirements, the effective date of certification is the date of admission.

d. If the additional information is received after the initial 20-working-day time frame and the client meets all requirements, the effective date of certification is no earlier than the date a completed packet is received by HSS.

3. Data may be submitted before admission of the client if all other conditions for the admission are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 456.350-456.438.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:697 (April 1999), repromulgated LR 31:2228 (September 2005).

§30503. Certification Requirements

A. The following documentation and procedures are required to obtain medical certification for ICF/MR Medicaid vendor payment. The documentation should be submitted to the appropriate HSS regional office.

1. Social evaluation:

a. must not be completed more than 90 days prior to admission and no later than date of admission; and

b. must address the following:

i. family, educational and social history including any previous placements;

ii. treatment history that discusses past and current interventions, treatment effectiveness, and encountered negative side effects;

iii. current living arrangements;

iv. family involvement, if any;

v. availability and utilization of community, educational, and other sources of support;

vi. habilitation needs;

vii. family and/or client expectations for services;

viii. prognosis for independent living; and

ix. social needs and recommendation for ICF/MR placement.

2. Psychological evaluation:

a. must not be completed more than 90 days prior to admission and no later than the date of admission; and

b. must include the following components:

i. comprehensive measurement of intellectual functioning;

ii. a developmental and psychological history and assessment of current psychological functioning;

iii. measurement of adaptive behavior using multiple informants when possible;

iv. statements regarding the reliability and validity of informant data including discussion of potential informant bias;

v. detailed description of adaptive behavior strengths and functional impairments in self-care, language, learning, mobility, self-direction, and capacity for independent living;

vi. discussion of whether impairments are due to a lack of skills or noncompliance and whether reasonable learning opportunities for skill acquisition have been provided; and

vii. recommendations for least restrictive treatment alternative, habilitation and custodial needs and needs for supervision and monitoring to ensure safety.

3. A psychiatric evaluation must be completed if the client has a primary or secondary diagnosis of mental illness, is receiving psychotropic medication, has been hospitalized in the past three years for psychiatric problems, or if significant psychiatric symptoms were noted in the psychological evaluation or social assessment. The psychiatric evaluation:

a. shall not be completed more than 90 days prior to admission and no later than the date of admission;

b. should include a history of present illness, mental status exam, diagnostic impression, assessment of strengths and weaknesses, recommendations for therapeutic interventions, and prognosis; and

c. may be requested at the discretion of HSS to determine the appropriateness of placement if admission material indicates the possible need for psychiatric intervention due to behavior problems.

4. Physical, occupational, or speech therapy evaluation(s) may be requested when the client receives services or is in need of services in these areas.

5. An individual service plan (ISP) developed by the interdisciplinary team, completed within 30 days of admission that describes and documents the following:

a. habilitation needs;

b. specific objectives that are based on assessment data;

c. specific services, accommodations, and/or equipment needed to augment other sources of support to facilitate placement in the ICF/MR; and

d. participation by the client, the parent(s) if the client is a minor, or the client's legal guardian unless participation is not possible or inappropriate.

NOTE: Document the reason(s) for any nonparticipation by the client, the client's parent(s), or the client's legal guardian.

6. Form 90-L (Request for Level of Care Determination) must be submitted on each admission or readmission. This form must:

a. not be completed more than 30 days before admission and not later than the date of admission;

b. be completed fully and include prior living arrangements and previous institutional care;

c. be signed and dated by a physician licensed to practice in Louisiana. Certification will not be effective any earlier than the date the Form 90-L is signed and dated by the physician;

d. indicate the ICF/MR level of care; and

e. include a diagnosis of mental retardation/developmental disability or related condition as well as any other medical condition.

7. Form 148 (Notification of Admission or Change):

a. must be submitted for each new admission to the ICF/MR;

b. must be submitted when there is a change in a client's status: death, discharge, transfer, readmission from a hospital;

c. for clients' whose application for Medicaid is later than date of admission, the date of application must be indicated on the form.

8. Transfer of a Client

a. Transfer of a Client Within an Organization

i. Form 148 must be submitted by both the discharging facility and the admitting facility. It should indicate the date the client was discharged from the transferring facility plus the name of the receiving facility and the date admitted.

ii. An updated individual service plan must be submitted from the discharging facility to the receiving facility. The previous plan can be used but must show any necessary revisions that the receiving facility ID team feels appropriate and/or necessary.

iii. The receiving facility must submit minutes of an ID team meeting addressing the reason(s) for the transfer, the family and client's response to the move, and the signatures of the persons attending the meeting.

b. Transfer of a Client Not Within the Same Organization. Certification requirements involving the transfer of a client from one ICF/MR facility to another not within the same organization or network will be the same as for a new admission.

i. The discharging facility will notify HSS of the discharge by submitting Form 148 giving the date of discharge and destination.

ii. The receiving facility must follow all steps for a new admission.

9. Readmission of a Client Following Hospitalization

a. Form 148 must be submitted showing the date Medicaid billing was discontinued and the date of readmission to the facility.

b. Documentation must be submitted that specifies the client's diagnosis, medication regime, and includes the physician's signature and date. The documentation can be:

i. Form 90-L;

ii. hospital transfer form;

iii. hospital discharge summary; or

iv. physician's orders.

c. An updated ISP must be submitted showing changes, if any, as a result of the hospitalization.

10. Readmission of a Client Following Exhausted Home Leave Days

a. Form 148 must be submitted showing the date billing was discontinued and the date of readmission.

b. An updated ISP must be submitted showing changes, if any, as a result of the extended home leave.

11. Transfer of a Client from an ICF/MR Facility to a Nursing Facility. When a client's medical condition has deteriorated to the extent that they cannot participate in or benefit from active treatment and require 24-hour nursing care, the ICF/MR may request prior approval from HSS to transfer the client to a nursing facility by submitting the following information:

a. Form 148 showing that transfer to a nursing facility is being requested;

b. Form 90-L completed within 30 days prior to request for transfer indicating that nursing facility level of care is needed;

c. Level 1 PASARR completed within 30 days prior to request for transfer;

d. ID team meeting minutes addressing the reason for the transfer, the family and client's response to the move, and the signatures of the persons attending the meeting; and

e. any other medical information that will support the need for nursing facility placement.

12. Inventory for Client and Agency Planning (ICAP) service score.

13. Level of Needs and Services (LONS) summary sheet.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:698 (April 1999), LR 30:1702 (August 2004), repromulgated LR 31:2229 (September 2005).

Chapter 307. Records

Subchapter A. Client Records

§30701. General Requirements

A. Written Policies and Procedures. An ICF/MR facility shall have written policies and procedures governing access to, publication of, and dissemination of information from client records.

B. Protection of Records. Client records are the property of the ICF/MR residents and as such shall be protected from loss, damage, tampering, or use by unauthorized individuals. Records may be removed from the ICF/MR's jurisdiction and safekeeping only in accordance with a court order, subpoena or statute.

C. Confidentiality. An ICF/MR facility shall ensure confidential treatment of client records, including information contained in automatic data banks.

1. The client's written consent, if the client is determined competent, shall be required for the release of information to any persons not otherwise authorized under law to receive it. If the client is not documented as competent, a member of the family, responsible party or advocate shall be required to sign.

NOTE: "Blanket" signed authorizations for release of information from client records are time limited.

2. A record of all disclosures from client's records shall be kept.

3. All staff shall be trained in the policies regarding confidentiality during orientation to the ICF/MR and in subsequent on-the-job and in-service training.

4. Any information concerning a client or family considered too confidential for general knowledge by the ICF/MR staff shall be kept in a separate file by the chief executive officer, his designee, or social worker. A notation regarding the whereabouts of this information shall be made in the client's record.

D. Availability of Records. The ICF/MR shall make necessary records available to appropriate state and federal personnel upon request.

E. Records Service System

1. The ICF/MR shall maintain an organized central record service for collecting and releasing client information. Copies of appropriate information shall be available in the client living units.

2. A written policy shall be maintained regarding a "charge out system" by which a client's record may be located when it is out of file.

3. The ICF/MR shall maintain a master alphabetical index of all clients.

4. All records shall be maintained in such a fashion as to protect the legal rights of clients, the ICF/MR, and ICF/MR staff.

F. General Contents of Records. A written record shall be maintained for each client.

1. Records shall be adequate for planning and for continuously evaluating each client's habilitation plan and documenting each client's response to and progress in the habilitation plan.

2. Records shall contain sufficient information to allow staff members to execute, monitor and evaluate each client's habilitation program.

G. Specifics Regarding Entries into Client Records. The following procedures shall be adhered to when making entries into a client's record.

1. All entries shall be legible, signed, and dated by the person making the entry.

2. All corrections shall be initialed and completed in such a manner that the original entry remains legible.

3. Entries shall be dated only on the date when they are made.

4. The ICF/MR shall maintain a roster of signatures, initials and identification of individuals making entries in each record.

H. Components of Client Records. Components of client records shall include, but shall not be limited to, the following:

1. admission records;
2. personal property records;
3. financial records;
4. medical records.

a. This includes records of all treatments, drugs, and services for which vendor payments have been made, or which are to be made, under the Medical Assistance Program.

b. This includes the authority for and the date of administration of such treatment, drugs, or services.

c. The ICF/MR shall provide sufficient documentation to enable DHH to verify that each charge is due and proper prior to payment.

5. All other records which DHH finds necessary to determine a ICF/MR's compliance with any federal or state law, rule or regulation promulgated by the DHH.

I. Retention of Records. The ICF/MR shall retain records for whichever of the following time frames is longer:

1. until records are audited and all audit questions are answered;

2. in the case of minors, three years after they become 18 years of age; or

3. three years after the date of discharge, transfer, or death of the client.

J. Interdicted Client. If the ICF/MR client has been interdicted, a copy of the legal documents shall be contained in the client's records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 42 CFR 433 and 42 CFR 483.400.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:684 (April 1999), repromulgated LR 31:2230 (September 2005).

§30703. Admission Records

A. At the time of admission to the ICF/MR, information shall be entered into the client's record which shall identify and give a history of the client. This identifying information shall at least include the following:

1. a recent photograph;
2. full name;
3. sex;
4. date of birth;
5. ethnic group;
6. birthplace;
7. height;
8. weight;
9. color of hair and eyes;
10. identifying marks;
11. home address, including street address, city, parish and state;
12. Social Security Number;
13. medical assistance identification number;
14. Medicare claim number, if applicable;
15. citizenship;
16. marital status;
17. religious preference;
18. language spoken or understood;
19. dates of service in the United States Armed Forces, if applicable;
20. legal competency status if other than competent;
21. sources of support: social security, veterans' benefits, etc.;
22. father's name, birthplace, Social Security Number, current address, and current phone number;
23. mother's maiden name, birthplace, Social Security Number, current address, and current phone number;
24. name, address, and phone number of next of kin, legal guardian, or other responsible party;
25. date of admission;
26. name, address and telephone number of referral agency or hospital;
27. reason for admission;
28. admitting diagnosis;
29. current diagnosis, including primary and secondary DSM III diagnosis, if applicable;
30. medical information, such as allergies and general health conditions;
31. current legal status;
32. personal attending physician and alternate, if applicable;
33. choice of other service providers;
34. name of funeral home, if appropriate; and
35. any other useful identifying information. Refer to *Admission Review* for procedures.

B. First Month After Admission. Within 30 calendar days after a client's admission, the ICF/MR shall complete and update the following:

1. review and update the pre-admission evaluation;

2. develop a prognosis for programming and placement;

3. ensure that an interdisciplinary team completes a comprehensive evaluation and designs an individual

habilitation plan (IHP) for the client which includes a 24-hour schedule.

C. Entries into Client Records During Stay at the ICF/MR. The following information shall be added to each client's record during his/her stay at the ICF/MR:

1. reports of accidents, seizures, illnesses, and treatments for these conditions;

2. records of immunizations;

3. records of all periods where restraints were used, with authorization and justification for each, and records of monitoring in accordance with these standards;

4. reports of at least an annual review and evaluation of the program, developmental progress, and status of each client, as required in these standards;

5. behavior incidents and plans to manage inappropriate behavior;

6. records of visits and contacts with family and other persons;

7. records of attendance, absences, and visits away from the ICF/MR;

8. correspondence pertaining to the client;

9. periodic updates of the admission information (such updating shall be performed in accordance with the written policy of the ICF/MR but at least annually); and

10. appropriate authorizations and consents.

D. Entries at Discharge. At the time of a client's discharge, the QMRP or other professional staff, as appropriate, shall enter a discharge summary into the client's record. This summary shall address the findings, events, and progress of the client while at the ICF/MR and a diagnosis, prognosis, and recommendations for future programming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:685 (April 1999), repromulgated LR 31:2231 (September 2005).

§30705. Medical Records

A. General Requirements. The ICF/MR shall maintain medical records which include clinical, medical, and psychosocial information on each client.

B. Components of Medical Records. Each client's record shall consist of a current active medical section and the ICF/MR's medical files or folders.

1. Active Medical Section. The active medical section shall contain the following information:

a. at least six months of current pertinent information relating to the active ongoing medical care;

b. physician certification of the clients' need for admission to the ICF/MR;

c. physician recertification that the client continues to require the services of the ICF/MR;

d. nurses quarterly physical assessment. See §31101, Client Health and Habilitative Services;

e. quarterly, the pharmacy consultant must review the drug regimen of each client;

f. certification that each IHP has been periodically reviewed and revised.

2. Medical Files. As the active medical section becomes bulky, the outdated information shall be removed and filed in the ICF/MR's medical files.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:685 (April 1999), repromulgated LR 31:2231 (September 2005).

§30707. Personal Property Records

A. The ICF/MR shall permit clients to maintain and use their personal property. The number of personal possessions may be limited only for health and safety reasons. When such limitations are imposed, documentation is required in the client's records.

1. Within 24 hours after admission, the ICF/MR shall prepare a written inventory of the personal property a client brings to the ICF/MR.

2. The facility authorized representative shall sign and retain the written inventory and shall give a copy to the client, family or responsible party.

3. The ICF/MR shall revise the written inventory to show if acquired property is lost, destroyed, damaged, replaced or supplemented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 42 CFR 483.420.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:686 (April 1999), repromulgated LR 31:2232 (September 2005).

§30709. Financial Records

A. General Requirements. Clients have the right to maintain their personal funds or to designate someone to assume this responsibility for them. Clients' income may be from social security, supplemental security income (SSI), optional state supplementation, other sources (VA or insurance benefits, etc.) or earnings of the client. A portion of the clients' income is used to pay the clients' share (liability) of the monthly charges for the ICF/MR. The ICF/MR shall:

1. have written policies and procedures for protecting clients' funds and for counseling clients concerning the use of their funds;

2. develop written procedures for the recording and accounting of client's personal funds;

NOTE: ICF/MRs shall ensure the soundness and accuracy of the client fund account system.

3. train clients to manage as many of their financial affairs as they are capable. Documentation must support that training was provided and the results of that training;

4. maintain current records that include the name of the person (client or person designated) handling each client's personal funds;

5. be responsible for the disbursements, deposits, soundness, and accuracy of the clients personal funds account when arrangements are made with a federal or state insured banking institution to provide banking services for the clients;

NOTE: All bank charges, including charges for ordering checks, shall be paid by the ICF/MR and not charged to the clients' personal funds account(s).

6. maintain current, written individual ledger sheet records of all financial transactions involving client's

personal funds which the facility is holding and safeguarding;

NOTE: ICF/MRs shall keep these records in accordance with requirements of law for a trustee in a fiduciary relationship.

7. make personal fund account records available upon request to the client, family, responsible party, and DHH.

B. Components Necessary for a Client Fund Account System. The ICF/MR shall:

1. maintain current, written individual records of all financial transactions involving clients' personal funds which the ICF/MR is holding, safeguarding, and accounting;

2. keep these records in accordance with requirements of law for a trustee in a fiduciary relationship which exists for these financial transactions;

3. develop the following procedures to ensure a sound and workable fund accounting system.

a. Individual Client Participation File. Client s ledger sheet shall consist of the following criteria.

i. A file shall exist for each participating client. Each file or record shall contain all transactions pertinent to the account, including the following information:

(a). name of the client and date of admission;

(b). deposits:

(i). date;

(ii). source; and

(iii). amount;

(c). withdrawals:

(i). date;

(ii). check/petty cash voucher number;

(iii). payee (if check is issued);

(iv). purpose of withdrawal; and

(v). amount;

(d). fund balance after each transaction.

NOTE: Checks shall not be payable to "cash" or employees of the facility.

ii. Maintain receipts or invoices for disbursements that shall include the following information:

(a). the date;

(b). the amount;

(c). the description of items purchased; and

(d). the signature of the client, family, or responsible party to support receipt of items.

iii. Supporting documentation shall be maintained for each withdrawal as follows:

(a). cash register receipt with canceled check or petty cash voucher signed by the client; or

(b). invoice with canceled check or petty cash voucher signed by the client; or

(c). petty cash voucher signed by the client; or

(d). canceled check.

NOTE: Canceled checks written to family members or responsible parties are sufficient receipts for disbursements if coupled with information regarding the purpose of expenditures.

iv. Supporting documentation shall be maintained for each deposit as follows:

(a). receipts for all cash received on behalf of the residents; and

(b). copies of all checks received on behalf of the residents.

v. All monies, either spent on behalf of the client or withdrawn by the client, family, or responsible party, shall be supported on the individual ledger sheet by a receipt, invoice, canceled check, or signed voucher on file.

NOTE: It is highly recommended that the functions for actual disbursement of cash and reconciling of the cash disbursement record be performed by separate individuals.

vi. The file shall be available to the client, family, or other responsible party upon request during the normal administrative work day.

b. Client's Personal Funds Bank Account(s). ICF/MRs may deposit clients' money in individual or collective bank account(s). The individual or collective account(s) shall:

i. be separate and distinct from all ICF/MR facility accounts;

ii. consist solely of clients' money and shall not be commingled with the ICF/MR facility account(s);

iii. personal fund record shall be:

(a). maintained at the facility; and

(b). available daily upon request during banking hours.

c. Reconciliations of Client's Personal Funds Account(s). There shall be a written reconciliation, at least monthly, by someone other than the custodian of the client's personal funds account(s). "Assets" (cash in bank, both checking and savings) must equal "liabilities" [ledger sheet balance(s)]. Collective bank accounts shall be reconciled to the total of client's ledger sheet balances. The reconciliation shall be reviewed and approved by someone other than the preparer or custodian of the client's personal funds account.

d. Unallowable Charges to Client's Personal Funds Account(s). It is the intent of the State of Louisiana that ICF/MRs provide total maintenance for recipients. The client's personal funds should be set aside for individual wants or to spend as the client sees fit. In the event that a client desires to purchase a certain brand, he/she has the right to use his/her personal funds in this manner; however, the client must be made aware of what the facility is providing prior to making his/her decision. Written documentation must be maintained to support that the client was made aware of products or services the facility is obligated to provide. Listed below (but not limited to) are items that shall not be charged to a client's personal funds account(s), the client's family or responsible party(s):

i. clothing. If a client does not have adequate seasonal clothing (including shoes, etc.), it is the responsibility of the facility to provide the clothing;

ii. personal hygiene items;

iii. haircuts;

iv. dentures/braces, etc.;

v. eyeglasses;

vi. hearing and other communication aids;

vii. support braces;

viii. any other devices identified by the interdisciplinary team;

ix. wheelchairs;

x. repair and maintenance of items listed in Clauses iv-ix;

xi. damage to facility property or the client's possessions. The client may not be charged for damage to facility property or the property of others caused by that individual's destructive behavior. ICF/MRs have a general

responsibility to maintain the environment as a cost of doing business. Property of clients damaged or stolen by others must be replaced by the facility;

xii. transportation;

xiii. prescription or over-the-counter drugs;

xiv. recreational costs included in the IHP;

xv. medical expenses of any nature;

xvi. tips, gifts, expenses for staff;

xvii. supplies or items to meet goals of IHP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 42 CFR 483.420(b).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:686 (April 1999), repromulgated LR 31:2232 (September 2005).

§30711. Cash on Hand

A. ICF/MRs shall have a minimum of cash on hand to meet client's spending needs. Cash on hand shall be maintained on the imprest petty cash system which includes pre-numbered petty cash vouchers. Petty cash shall be maintained at the facility and shall be available to the clients 24 hours a day, seven days a week.

B. The facility shall provide the funds to implement the petty cash system and replenish it, as necessary, from the clients' personal funds based on signed vouchers. Vouchers may be signed by clients, families, or responsible parties. When residents cannot sign their name, vouchers shall be signed by two witnesses. Checks issued to replenish the fund should be made payable to "Custodian of Petty Cash." When funds are withdrawn from the clients' savings account to cover signed vouchers, a receipt signed by the custodian of petty cash shall be maintained in lieu of a canceled check.

C. There shall be a written reconciliation, at least weekly, by someone other than the custodian of the petty cash fund. The reconciliation shall be reviewed and approved by someone other than the preparer or custodian of the petty cash fund.

NOTE: The facility is responsible for shortages.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:687 (April 1999), repromulgated LR 31:2234 (September 2005).

§30713. Access to Funds

A. Clients shall have access to their funds during hours compatible to banking institutions in the community where they live. Large ICF/MRs shall post the times when clients shall have access to their funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999), repromulgated LR 31:2234 (September 2005).

§30715. Closing a Discharged Client's Fund Account

A. When a client is discharged, the ICF/MR shall refund the balance of a client's personal account and that portion of any advance payment not applied directly to the ICF/MR fee. The amount shall be refunded to the client, family or other responsible party within 30 days following the date of discharge. Date, check number, and "to close account" should be noted on the ledger sheet. When the facility is the payee for a social security check or other third party payments, the change in payee should be initiated immediately by the facility.

NOTE: The facility shall allow the client to withdraw a minimum of $25 from his/her personal funds account on the date of discharge.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999), repromulgated LR 31:2234 (September 2005).

§30717. Disposition of Deceased Client's Personal Funds

A. ICF/MRs, upon a client's death, shall submit written notification within 10 business days to the next of kin disclosing the amount of funds in the deceased's account as of the date of death. The ICF/MR shall hold the funds until the next of kin notifies the ICF/MR whether a succession will be opened.

1. Succession Opened. If a succession is to be opened, the ICF/MR shall release the funds to the administrator of the estate, if one, or according to the judgment of possession.

2. Succession Not Opened. If no succession is to be opened, the ICF/MR shall make the funds payable to the deceased's estate and shall release the funds to the responsible party of record.

B. Release of Funds. In any case in which funds are released in accordance with a court order, judgment of possession, or affidavit, the funds shall be made available to the persons or parties cited by the court order. The signed statement shall be attached to the written authority and filed in the ICF/MR records.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999), repromulgated LR 31:2234 (September 2005).

§30719. Disposition of Deceased Client's Unclaimed Personal Funds

A. If the ICF/MR retains the funds and the responsible party (legal guardian, administrator of the estate, or person placed in possession by the court judgment) fails to obtain the funds within three months after the date of death, or if the ICF/MR fails to receive notification of the appointment of or other designation of a responsible party within three months after the death, the ICF/MR shall notify the secretary of the Department of Revenue, Unclaimed Property Section. The notice shall provide detailed information about the decedent, his next of kin, and the amount of funds.

1. The facility shall continue to retain the funds until a court order specifies that the funds are to be turned over to secretary of the Department of Revenue.

2. If no order or judgment is forthcoming, the ICF/MR shall retain the funds for five years after date of death.

3. After five years, the ICF/MR is responsible for delivering the unclaimed funds to the secretary of Revenue.

4. A termination date of the account and the reason for termination shall be recorded on the client's participation file. A notation shall read, "to close account." The endorsed canceled check with check number noted on the ledger sheet shall serve as sufficient receipt and documentation.

5. Where the legislature has enacted a law governing the disposition of personal funds belonging to residents of state schools for the mentally retarded or developmentally disabled that law shall be applicable.

B. References. References for §§30717 and 30719 are as follows:

1. *Civil Code* Article 2951 which deals with deposits of a deceased person;

2. *Code of Civil Procedure*, Articles 3421-3434, which deals with small successions requiring no judicial proceedings. Section 3431 specifically refers to persons who die intestate leaving no immovable property and whose sole heirs are his descendants, ascendants or surviving spouse.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999), repromulgated LR 31:2234 (September 2005).

Subchapter B. Facility Records

§30739. General Requirements

A. The ICF/MR shall retain such records on file as required by DHH and shall have them available for inspection at request for three years from the date of service or until all audit exceptions are resolved, whichever period is longer.

B. Provider Agreement. The ICF/MR shall retain a copy of the Provider Agreement and any document pertaining to the licensing or certification of the ICF/MR.

C. Accounting Records

1. Accounting records must be maintained in accordance with generally accepted accounting principles as well as state and federal regulations. The accrual method of accounting is the only acceptable method for private providers.

NOTE: Purchase discounts, allowance and refunds will be recorded as a reduction of the cost to which they related.

2. Each facility must maintain all accounting records, books, invoices, canceled checks, payroll records, and other documents relative to client care costs for a period of three years or until all audit exceptions are resolved, whichever period is longer.

3. All fiscal and other records pertaining to client care costs shall be subject at all times to inspection and audit by DHH, the legislative auditor, and auditors of appropriate federal funding agencies.

D. Daily Census Records. Each facility must maintain statistical information related to the daily census and/or attendance records for all clients receiving care in the facility.

E. Employee Records

1. The ICF/MR shall retain written verification of hours worked by individual employees.

a. Records may be sign-in sheets or time cards, but shall indicate the date and hours worked.

b. Records shall include all employees even on a contractual or consultant basis.

2. Verification of criminal background check.

3. Verification of employee orientation and in-service training.

4. Verification of the employee's communicable disease screening.

F. Billing Records

1. The ICF/MR shall maintain billing records in accordance with recognized fiscal and accounting procedures. Individual records shall be maintained for each client. These records shall meet the following criteria.

a. Records shall clearly detail each charge and each payment made on behalf of the client.

b. Records shall be current and shall clearly reveal to whom charges were made and for whom payments were received.

c. Records shall itemize each billing entry.

d. Records shall show the amount of each payment received and the date received.

2. The ICF/MR shall maintain supporting fiscal documents and other records necessary to ensure that claims are made in accordance with federal and state requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, 42 CFR 433 and 42 CFR 442.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:690 (April 1999), repromulgated LR 31:2235 (September 2005).

Chapter 309. Transfers and Discharges

§30901. Written Agreements with Outside Resources

A. Each client must have the services which are required to meet his needs including emergency and other health care. If the service is not provided directly, there must be a written agreement with an outside resource. The written agreement for hospital transfers must be with hospitals within close proximity and must provide for prompt transfer of clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and CFR 483.410(d), 483.410(d)(1)-483.410(d)(2)(ii) and 483.440(b)(1)-483.440(b)(5)(ii).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999), repromulgated LR 31:2235 (September 2005).

§30903. Facility Responsibilities for Planned or Voluntary Transfer or Discharge Policies

A. Facility record shall document that the client was transferred or discharged for good cause which means for any reason that is in the best interest of the individual.

B. Any decision to move a client shall be part of an interdisciplinary team process. The client, family, legal representative, and advocate, if there is one, shall participate in the decision making process.

C. Planning for a client's discharge or transfer shall allow for at least 30 days to prepare the client and parents/guardian for the change except in emergencies.

D. Planning for release of a client shall include providing for appropriate services in the client's new environment, including protective supervision and other follow-up services which are detailed in his discharge plan.

E. The client and/or legal representative must give their written consent to all nonemergency situations. Notification shall be made to the parents or guardians as soon as possible.

F. Both the discharging and receiving facilities shall share responsibility for ensuring the interchange of medical and other programmatic information which shall include:

1. an updated active treatment plan;

2. appropriate transportation and care of the client during transfer; and

3. the transfer of personal effects and of information related to such items.

G. Representatives from the staff of both the sending and receiving facilities shall confer as often as necessary to share appropriate information regarding all aspects of the client's care and habilitation training. The transferring facility is responsible for developing a final summary of the client's developmental, behavioral, social, health, and nutritional status, and with the consent of the client and/or legal guardian, providing a copy to authorized persons and agencies.

H. The facility shall establish procedures for counseling clients or legal representatives, concerning the advantages and disadvantages of the possible release. This counseling shall include information regarding after care services available through agency and community resources.

I. All clients being transferred or discharged shall be given appropriate information about the new living arrangement. Counseling shall be provided if they are not in agreement. (See "Involuntary Transfers" if client is being transferred against his will).

J. The basic policy of client's right to the most appropriate placement which will meet his needs shall govern all transfer/discharge planning. Clients are not to be maintained in inappropriate placements or replacements in which their needs cannot adequately be met.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:689 (April 1999), repromulgated LR 31:2235 (September 2005).

§30905. Involuntary Transfer or Discharge

A. Conditions. Involuntary transfer or discharge of a client may occur only under the following conditions:

1. the transfer or discharge is necessary for the client's welfare and the client's needs cannot be met in the facility;

2. the transfer or discharge is appropriate because the client's health has improved sufficiently, therefore, the client no longer needs the services provided by the facility;

3. the safety of individuals in the facility is endangered;

4. the health of individuals in the facility would otherwise be endangered;

5. the client has failed, after reasonable and appropriate notice, to pay for the portion of the bill for services for which he/she is liable or when the client loses financial eligibility for Medicaid. When a client becomes eligible for Medicaid after admission to a facility, the facility may charge the client only allowable charges under Medicaid; and

6. the facility ceases to operate.

B. When the facility proposes to transfer or discharge a client under any of the circumstances specified in Paragraphs A.1-5 above, the client's clinical records must be fully documented. The documentation must be made by the following:

1. the client's physician when transfer or discharge is necessary as specified in Paragraph A.1 or 2 as listed above; or

2. any physician when transfer or discharge is necessary as specified in Paragraph A.4 as listed above. Before an interfacility transfer or discharge occurs the facility must:

a. notify the client of the transfer or discharge and the reason for the move. The notification shall be in writing and in a language and manner that the client understands. A copy of the notice must be placed in the client's clinical record and a copy transmitted to:

i. the client;

ii. a family member of the client, if known;

iii. the client's legal representative and legal guardian, if known;

iv. the Community Living Ombudsman Program;

v. DHH—Health Standards Section;

vi. the regional office of OCDD for assistance with the placement decision;

vii. the client's physician;

viii. appropriate educational authorities; and

ix. a representative of the client's choice;

b. record the reasons in the client's clinical record;

c. a interdisciplinary team conference shall be conducted with the client, family member or legal representative and an appropriate agency representative to update the plan and develop discharge options that will provide reasonable assurances that the client will be transferred or discharged to a setting that can be expected to meet his/her needs;

3. the facility must issue the notice of transfer or discharge in writing at least 30 days before the resident is transferred or discharged, except under the circumstances described in Subparagraph a below:

a. notice may be made as soon as practicable before transfer or discharge when:

i. the safety of individuals in the facility would be endangered;

ii. the health of individuals in the facility would be endangered;

iii. the client's health improves sufficiently to allow a more immediate transfer or discharge; or

iv. an immediate transfer or discharge is required by the client's urgent medical needs as determined by a physician;

b. notice may be made at least 15 days before transfer or discharge in cases of nonpayment of a bill for cost of care;

c. the written notice must include:

i. the reason for transfer or discharge;

ii. the effective date of transfer or discharge;

iii. the location to which the client is transferred or discharged;

iv. an explanation of the client's right to have personal and/or third party representation at all stages of the transfer or discharge process;

v. the address and telephone number of the Community Living Ombudsman Program;

vi. the mailing address and telephone number of the agency responsible for the protection of individuals with developmental disabilities;

vii. names of facility personnel available to assist the client and family in decision making and transfer arrangements;

viii. the date, time and place for the follow-up interdisciplinary team conference to make a final decision on the client's/legal representative's choice of new facility of alternative living arrangement;

ix. an explanation of the client's right to register a complaint with DHH within three days after the follow-up interdisciplinary team conference;

x. a statement regarding appeal rights that reads: "You or someone acting on your behalf has the right to appeal the health facility's decision to discharge you. The written request for a hearing must be postmarked within 30 days after you receive this notice or prior to the effective date of the transfer or discharge. If you request a hearing, it will be held within 30 days after the facility notifies the Bureau of Appeals of the witnesses who shall testify at the discharge hearing as well as the documents that will be submitted as evidence. You will not be transferred/discharged from the facility until a decision on the appeal has been rendered;" and

xi. the name of the director, and the address, telephone number, and hours of operation of the Bureau of Appeals of the Louisiana Department of Health and Hospitals.

C. The facility shall provide all services required prior to discharge that are contained in the final update of the individual habilitation plan and in the transfer or discharge plan.

D. The facility shall be responsible for keeping the client, whenever medical or other conditions warrant such action, for as long as necessary even if beyond the proposed date of transfer or discharge, except in emergency situations.

E. The facility shall provide transportation to the new residence unless other arrangements are preferred by the client/legal representative or the receiving facility.

F. Appeal of Transfer or Discharge. If the client appeals the transfer or discharge, the ICF/MR facility must permit the client to remain in the facility and must not transfer or discharge the client from the facility until the final appeal decision has been reached or a pre-hearing conference is held at the request of the facility. Failure to comply with these requirements will result in termination of the facility's provider agreement.

G. If nonpayment is the basis of a transfer or discharge, the client shall have the right to pay the balance owed to the facility up to the date of the transfer or discharge and then is entitled to remain in the facility.

H. If an ICF/MR client requests a hearing, the Louisiana Department of Health and Hospitals shall hold a hearing at the ICF/MR facility, or by telephone if agreed upon by the appellant, within 30 days from the date the appeal is filed with the Bureau of Appeals and witness and exhibit lists are submitted by the facility. The Louisiana Department of Health and Hospitals shall issue a decision within 30 days from the date of the client hearing. The ICF/MR facility must convince the department by a preponderance of the evidence that the transfer or discharge is justified. If the department determines that the transfer is appropriate and no appeal and/or pre-hearing conference has been lodged with the Bureau of Appeals, the client must not be required to leave the ICF/MR facility within 30 days after the client's receipt of the initial transfer or discharge notice unless an emergency exists.

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 Human Resources LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:690 (April 1999), LR 30:1700 (August 2004), repromulgated LR 31:2236 (September 2005).

§30907. Mass Transfer of Clients

A. The following provisions shall apply to any mass transfer.

1. ICF/MR Decertification. When DHH/BHSF determines that an ICF/MR no longer meets state and federal Title XIX certification requirements, decertification action is taken. Usually an advance decertification date is set unless clients are in immediate danger.

2. ICF/MR Decertification Notice. On the date the ICF/MR is notified of its decertification, DHH shall begin notifying clients, families, responsible parties, and other appropriate agencies or individuals of the decertification action and of the services available to ensure an orderly transfer and continuity of care.

3. ICF/MR Closing or Withdrawing from Title XIX Program. In institutions where an ICF/MR either voluntarily or involuntarily discontinues its operations or participation in the Medical Assistance Program, clients, families, responsible parties, and other appropriate agencies or individuals shall be notified as far in advance of the effective date as possible to insure an orderly transfer and continuity of care.

a. If the ICF/MR is closing its operations, plans shall be made for transfer.

b. If the ICF/MR is voluntarily or involuntarily withdrawing from Title XIX participation, the client has the option of remaining in the ICF/MR on a private-pay basis.

4. Payment Limitation. Payments may continue for clients up to 30 days following the effective date of the ICF/MR's decertification.

a. There shall be no payments approved for Title XIX clients admitted after an ICF/MR receives a notice of decertification.

b. The payment limitation also applies to Title XIX clients admitted prior to the decertification notice.

c. Payment is continued to the ICF/MR for clients certified prior to the decertification only if the ICF/MR totally cooperates in the orderly transfer of clients to other Title XIX facilities or other placements of their choice.

NOTE:

The ICF/MR's failure to comply with the transfer team's requests may result in denial of reimbursement during the extension period.

The ICF/MR still retains its usual responsibility during the transfer/discharge process to notify the BHSF Medicaid Eligibility Parish Office promptly of all changes in the client's status.

5. Client Rights. Nothing in the transfer or discharge plan shall interfere with client's exercise of his rights.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:690 (April 1999), repromulgated LR 31:2237 (September 2005).

Chapter 311. Health Services

§31101. Client Health and Habilitative Services

A. *Intermediate Care Facilities for the Mentally Retarded (ICF/MR)*—intermediate care facilities whose primary purpose is to provide health or habilitative services for mentally retarded individuals or persons with related conditions and meet the standards in 42 CFR 442 and 483.400.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999), repromulgated LR 31:2238 (September 2005).

§31103. Habilitative Treatment Services

A. Active Treatment Services. The facility must provide or arrange for each client to receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual habilitation plan (IHP). These services include but are not limited to occupational, speech, physical and recreational therapies; psychological, psychiatric, audiology, social work, special education, dietary and rehabilitation counseling.

NOTE: Supplies, equipment, etc., needed to meet the goals of the IHP cannot be charged to the client or their responsible parties.

B. Active Treatment Components

1. Individual Habilitation Plan. Each client must have an individual habilitation plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to identifying the client's needs as described by the programs that meet those needs.

a. The facility must document in the individual habilitation plan (IHP) the presence, or the reason for absence, at the individual's staffing conference of the client, family members and relevant disciplines, professions or service areas as identified in the comprehensive functional assessment.

b. Within 30 days after admission, the interdisciplinary team must do assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission.

c. The comprehensive functional assessment must take into consideration the client's age and the implications for active treatment at each stage as applicable. It must contain the following components:

i. the presenting problems and disabilities and where possible, their causes including diagnosis, symptoms, complaints and complications;

ii. the client's specific developmental strengths;

iii. the client's specific developmental and behavioral management needs.

d. An identification of the client's needs for services without regard to the actual availability of the services.

e. The comprehensive functional assessment must cover the following developmental areas:

i. physical development and health;

ii. nutritional status;

iii. sensorimotor development;

iv. affective development;

v. speech and language development;

vi. auditory functioning;

vii. cognitive development;

viii. social development;

ix. adaptive behaviors or independent living skills necessary for the client to be able to function in the community;

x. vocational skills as applicable;

xi. psychological development.

2. Specific Objectives. Within 30 days after admission, the interdisciplinary team must prepare for each client an IHP that states specific objectives necessary to meet the client's needs, as identified by the comprehensive functional assessment, and states the plan for achieving these objectives.

a. Components for these objectives must be:

i. stated separately, in terms of a single behavioral outcome;

ii. be assigned projected completion dates;

iii. be expressed in behavioral terms that provide measurable indices of performance;

iv. be organized to reflect a developmental disability;

v. be assigned priorities.

b. A copy of each client's individual habilitation plan must be made available to all relevant staff, including staff of other agencies who work with the client, the client, parents, if the client is a minor, or legal guardian. The individual's habilitation plan must be implemented within 14 calendar days of its development.

c. The facility must develop and make available to relevant staff an active treatment schedule that outlines the current active treatment program.

d. Each written training program designed to implement these objectives in the individual habilitation plan must specify:

i. the methods to be used;

ii. the schedule for use of the methods;

iii. the person responsible for the program;

iv. the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

v. the inappropriate client behavior(s), if applicable; and

vi. a provision for the appropriate expression and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

e. The IHP must also:

i. describe relevant interventions to support the individual toward independence;

ii. identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found;

iii. include, for those clients who lack them, training in personal skills essential for privacy and independence (including skills and activities of daily living) until it has been demonstrated that the client is developmentally incapable of applying them;

iv. plans for discharge.

f. The IHP must identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. This plan must specify:

i. the reason for each support;

ii. the situation in which each is to be applied;

iii. a schedule for the use of each support.

g. Clients who have multiple disabling conditions must be provided the opportunity to spend a major portion of each working day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

h. The IHP must include opportunities for client choice and self management.

3. Documentation. The facility must document data relevant to the accomplishment of the criteria specified in the client's individual habilitation plan objectives. This data must meet certain criteria:

a. data must be documented in measurable outcomes;

b. significant events related to the client's individual habilitation plan and assessment and that contribute to an overall understanding of his ongoing level and quality of function must be documented;

c. the individual habilitation plan must be reviewed by a qualified mental retardation professional at least quarterly or as needed and revised as necessary, including but not limited to, situations in which the client:

i. has successfully completed an objective or objectives identified in the individual habilitation plan;

ii. is regressing or losing skills;

iii. is failing to progress toward identified objectives after reasonable efforts have been made;

iv. is being considered for training toward new objectives;

d. at least annually, the comprehensive assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed. The individual habilitation plan must be revised as needed or at least by the three hundred sixty-fifth day after the last review.

NOTE: For admission requirements, refer to Chapter 303, Provider Enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999), repromulgated LR 31:2238 (September 2005).

§31105. Professional Services

A. Physician Services

1. The health care of each client shall be under the continuing supervision of a Louisiana licensed physician. The facility must ensure the availability of physician services 24 hours a day. The facility must provide or obtain preventive and general medical care plus annual physical examinations of each client.

2. The client, the family or the responsible party shall be allowed a choice of physicians.

3. If the client does not have a personal physician, the ICF/MR shall provide referrals to physicians in the area, identifying physicians that participate in the Medicaid Program.

NOTE: The cost of physician services cannot be charged to the client or their responsible parties.

B. Nursing Services

NOTE: The cost for nursing services cannot be charged to the client or their legal representative.

1. The facility must provide each client nursing services as prescribed by a physician or as identified by the individual habilitation plan and client needs. Nursing services must include:

a. the development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

b. twenty-four-hour nursing service as indicated by the medical care plan or other nursing care as prescribed by the physician or as identified by client needs;

c. review of individual client health status on a quarterly or more frequent basis;

d. training clients and staff as needed in appropriate health and hygiene methods and self-administration of medications;

e. notify the physician of any changes in the client's health status.

2. If the facility utilizes only licensed practical nurses to provide health services, it must have a formal arrangement with a registered nurse licensed to practice in Louisiana to be available for verbal or on-site consultation to the licensed practical nurse.

C. Dental Services. The facility must provide or arrange for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement. The facility must ensure that dental treatment services include dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health. The facility must ensure the availability of emergency treatment on a 24-hour per day basis by a licensed dentist.

NOTE: The cost for these dental services cannot be charged to the client or their responsible party.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999), repromulgated LR 31:2239 (September 2005).

§31107. Pharmaceutical Services

A. The facility must provide or arrange for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

B. Routine administration of medications shall be done at the facility where the client resides. Clients may not be transported elsewhere for the sole purpose of medication administration.

C. The ICF/MR shall neither expect, nor require, any provider to give a discount or rebate for prescription services rendered by the pharmacists.

D. The ICF/MR shall order at least a one month supply of medications from a pharmacy of the client's, family's, or responsible party's choice. Less than a month's supply is ordered only when the attending physician specifies that a smaller quantity of medication is necessary for a special medical reason.

E. The ICF/MR chief executive officer or the authorized representative shall certify receipt of prescribed medications by signing and dating the pharmacy billing.

NOTE: The costs for drugs and biologicals cannot be charged to the client, family or responsible party including any additional charges for the use of the unit dose or blister pack system of packing and storing medications.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999), repromulgated LR 31:2240 (September 2005).

§31109. Aids and Equipment

A. The facility must furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communication aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

NOTE: The costs for aids and equipment cannot be charged to the clients or their legal representatives.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999), repromulgated LR 31:2240 (September 2005).

§31111. Nutritional Services

A. The facility must provide a nourishing, well-balanced diet for each client, including modified and specially prescribed diets. The nutritional component must be under the guidance of a licensed dietitian.

NOTE: Nutritional services are included in the per diem rate. Residents of ICF/MR facilities are not eligible for food stamps, commodities, or other subsidized food programs.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999), repromulgated LR 31:2240 (September 2005).

§31113. Clothing

A. The facility should provide adequate seasonal clothing for the client. *Adequate* is defined as a seven-day supply in good repair and properly fitting. Work uniforms or special clothing/equipment for training will be provided in addition to the seven-day supply.

B. The facility must maintain a current clothing inventory for each client.

1. A client with adequate clothing may purchase additional clothing using his/her personal funds if he/she desires.

2. If a client desires to purchase a certain brand, the client has the right to use his/her personal funds in this manner; however, the client must be made aware of what the facility is providing prior to making his/her decision.

NOTE: For more information on services that must be provided by the ICF/MR facility or may be purchased by the client, see §33101, Income Consideration in Determining Payment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999), repromulgated LR 31:2240 (September 2005).

Chapter 313. Client Behavior Management

§31301. Written Policies and Procedures

A. A facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures will:

1. specify conduct to be allowed and not allowed by staff and/or clients;

2. provide for client choice and self determination to the extent possible;

3. be readily available to all clients, parent(s), staff, and legal guardians;

4. be developed with the participation of clients to the extent possible.

B. A facility must develop and implement written policies and procedures for the management of inappropriate client behavior. These policies and procedures must:

1. specify all facility approved interventions to manage inappropriate client behavior;

2. designate these interventions on a hierarchy ranging from the most positive and least restrictive to the least positive and most restrictive;

3. insure that, prior to the use of more restrictive techniques, the client's record document that programs incorporating the use of less intrusive or more positive techniques have been tried first and found to be ineffective;

4. address the use of:

a. time-out rooms;

b. physical restraints;

c. drugs used to manage inappropriate behavior;

d. application of painful or noxious stimuli;

e. the staff members who may authorize use of a particular intervention;

f. a mechanism for monitoring and controlling use of the intervention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40.2009.2, R.S. 40:2009.20, R.S. 403.2, 42 CFR 483.420, 483.440, and 483.450.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:693 (April 1999), repromulgated LR 31:2240 (September 2005).

§31303. Interventions to Manage Inappropriate Client Behavior

A. Safety and Supervision. Interventions to manage inappropriate client behavior must be used within sufficient safeguards and supervision to insure that the safety, welfare, and civil and human rights of clients are adequately protected. These interventions must:

1. never be used:
   a. for disciplinary purposes;
   b. for the convenience of staff; or
   c. as a substitute for an active treatment program;
2. never include corporal punishment;
3. never include discipline of one client by another except as part of an organized system of self government as set forth in facility policy.

B. Individual Plans and Approval. Individual programs to manage inappropriate client behavior must be incorporated into the client's individual program plan and must be reviewed, approved, and monitored by the Specially Constituted Committee. Written informed consent by the client or legal representative is required prior to implementation of a behavior management plan involving any risks to client's rights. (See Chapter 315, Client Rights, which addresses informed consent.)

C. Standing Programs. Standing or as needed programs to control inappropriate behavior are not permitted. To send a client to his room when his behavior becomes inappropriate is not acceptable unless part of a systematic program of behavioral interventions for the individual client.

D. Time-out Rooms

1. Use of time-out rooms is not permitted in group or community homes.
2. In institutional settings, it is permitted only when professional staff is on-site and only under the following conditions:
   a. the placement in a time-out room is part of an approved systematic behavior program as required in the individual program to manage inappropriate behavior discussed under §31303.A.1-3; emergency placement is not allowed;
   b. the client is under direct constant visual supervision of designated staff;
   c. if the door to the room is closed, it must be held shut only by use of constant physical pressure from a staff member;
   d. placement in time-out room does not exceed one hour;
   e. clients are protected from hazardous conditions while in time-out rooms;
   f. a record is kept of time-out activities.

E. Physical Restraint. *Physical restraint* is defined as any manual method or physical or mechanical device that the individual cannot remove easily and which restricts free movement.

1. Examples of manual methods include:
   a. therapeutic or basket holds; and
   b. prone or supine containment.
2. Examples of physical or mechanical devices include:
   a. barred enclosure which must be no more than 3 feet in height and must not have tops;
   b. chair with a lap tray used to keep an ambulatory client seated;
   c. wheelchair tied to prevent movement of a wheelchair mobile client;
   d. straps used to prevent movement while client is in chair or bed.
3. Physical restraints can be used only:
   a. when absolutely necessary to protect the client from injuring himself or others in an emergency situation;
   b. when part of an individual program plan intended to lead to less restrictive means of managing the behavior the restraints are being used to control;
   c. as a health related protection prescribed by a physician but only if absolutely necessary during a specific medical, dental, or surgical procedure or while a medical condition exists;
   d. when the following conditions are met:
      i. orders for restraints are not obtained for use on a standing or on an as needed basis;
      ii. restraint authorizations are not in effect longer than 12 consecutive hours and are obtained as soon as possible after restraint has occurred in emergency situations;
      iii. clients in restraints are checked at least every 30 minutes and released as quickly as possible. Record of restraint checks and usage is required;
      iv. restraints are designed and used so as not to cause physical injury and so as to cause the least possible discomfort;
      v. opportunities for motion and exercise are provided for not less than 10 minutes during each two-hour period and a record is kept; and
      vi. restraints are applied only by staff who have had training in the use of these interventions.

F. Drugs. Drugs used for control of inappropriate behavior may be used only under the following conditions:

1. drugs must be used only in doses that do not interfere with the client's daily living activities;
2. drugs used for control of inappropriate behavior must be approved by the interdisciplinary team, the client, legal representative, and specially constituted committee. These drugs must be used only as part of the client's individual program plan that is directed toward eliminating the behavior the drugs are thought to control;
3. prior to the use of any program involving a risk to client protection and rights, including the use of drugs to manage inappropriate behavior, written informed consent must be obtained from:
   a. client; or

b. family, legal representative, or advocate if client is a minor or client is mentally unable to understand the intended program or treatment;

4. informed consent consists of permission given voluntarily on a time limited basis not to exceed 365 days by the client or the legally appropriate party after having been informed of the:

a. specific issue treatment or procedure;
b. client's specific status with regard to the issue;
c. attendant risks regarding the issue;
d. acceptable alternatives to the issue;
e. right to refuse;
f. consequences of refusal;

5. drugs must not be used until it can be justified that the beneficial effects of the drug on the client's behavior clearly outweighs the potentially harmful effects of the drug;

6. drugs must be clearly monitored in conjunction with the physician, the pharmacist, and facility staff;

7. unless clinical evidence justifies that this is contraindicated, drugs for control of inappropriate behavior must be gradually reduced at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40.2009.2, R.S. 40:2009.20, R.S. 403.2, 42 CFR 483.420, 483.440, and 483.450.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:693 (April 1999), repromulgated LR 31:2241 (September 2005).

Chapter 315. Client Rights

§31501. Written Policies

A. The ICF/MR will establish written policies that safeguard clients' rights and define their responsibilities. The ICF/MR chief executive officer and ICF/MR staff will be trained in, and will adhere to, client rights policies and procedures. ICF/MR personnel will protect and promote clients' civil rights and rights to a dignified existence, self-determination, communication with and access to persons and services inside and outside the facility and to exercise their legal rights. The chief executive officer will be responsible for staff compliance with client rights policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 28.390, 42 CFR 483.420 and 483.410 (1), (2), (3), Title XIX of the Social Security Act, Section 601 of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Age Discrimination Act of 1975.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:694 (April 1999), repromulgated LR 31:2242 (September 2005).

§31503. Notification of Rights

A. All clients, families, and/or responsible parties will sign a statement that they have been fully informed verbally and in writing of the following information at the time of admission and when changes occur during the client's stay in the facility:

1. the facility's rules;
2. their rights;
3. their responsibilities to obey all reasonable rules and respect the personal rights and private property of clients; and
4. rules for conduct at the time of their admissions and subsequent changes during their stay in the facility.

B. Changes in client right policies will be conveyed both verbally and in writing to each client, family, and/or responsible party at the time of or before the change.

C. Receipt of the change will be acknowledged in writing by:

1. each client who is capable of doing so;
2. client's family; and/or
3. responsible party.

D. A client's written acknowledgment will be witnessed by a third person.

E. Each client must be fully informed in writing of all services available in the ICF/MR and of the charges for these services including any charges for services not paid for by Medicaid or not included in the facility's basic rate per day charges. The facility must provide this information either before or at the time of admission and on a continuing basis as changes occur in services or charges during the client's stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 28.390, 42 CFR 483.420 and 483.410 (1), (2), (3), Title XIX of the Social Security Act, Section 601 of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Age Discrimination Act of 1975.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:694 (April 1999), repromulgated LR 31:2242 (September 2005).

§31505. Statute Authority

A. Civil Rights Act of 1964 (Title VI). Title VI of the Civil Rights Act of 1964 states: "No persons in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." The facility will meet the following criteria in regards to the above-mentioned Act.

1. Compliance. The facility will be in compliance with Title VI of the Civil Rights Act of 1964 and will not discriminate, separate, or make any distinction in housing, services, or activities based on race, color, or national origin.

2. Written Policies. The facility will adopt and implement written policies for compliance with the Civil Rights Act. All employees and contract service providers who provide services to clients will be notified in writing of the Civil Rights policy.

3. Community Notification. The facility will notify the community that admission to the ICF/MR, services to clients, and other activities are provided without regard to race, color, or national origin.

a. Notice to the community may be given by letters to and meetings with physicians, local health and welfare agencies, paramedical personnel, and public and private organizations having interest in equal opportunity.

b. Notices published in newspapers and signs posted in the facility may also be used to inform the public.

4. Housing. All clients will be housed without regard to race, color, or national origin.

a. ICF/MRs will not have dual accommodations to effect racial segregation.

b. Biracial occupancy of rooms on a nondiscriminatory basis will be required. There will be a policy prohibiting assignment of rooms by race.

c. Clients will not be asked if they are willing to share a room with a person of another race, color, or national origin.

d. Client transfer will not be used to evade compliance with Title VI of the Civil Rights Act of 1964.

5. Open Admission Policy. An open admission policy and desegregation of ICF/MR will be required, particularly when the facility previously excluded or primarily serviced clients of a particular race, color, or national origin. Facilities that exclusively serve clients of one race have the responsibility for taking corrective action, unless documentation is provided that this pattern has not resulted from discriminatory practices.

6. Client Services. All clients will be provided medical, nonmedical, and volunteer services without regard to race, color, or national origin. All administrative, medical and nonmedical services are covered by this requirement.

7. All ICF/MR staff will be permitted to provide client services without regard to race, color, or national origin.

a. Medical, paramedical, or the professional persons, whether engaged in contractual or consultative capacities, will be selected and employed in a nondiscriminatory manner.

b. Opportunity for employment will not be denied to qualified persons on the basis of race color, or national origin.

c. Dismissal from employment will not be based upon race, color, or national origin.

B. Rehabilitation Act of 1973—Section 504. Facilities will comply with Section 504 of the Rehabilitation Act of 1973 that states: "No qualified person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance."

C. Age Discrimination Act of 1975. This Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. All ICF/MRs must be in compliance with this Act.

D. Americans with Disabilities Act of 1990. All ICF/MR facilities must be in compliance with this Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 28.390, 42 CFR 483.420 and 483.410 (1), (2), (3), Title XIX of the Social Security Act, Section 601 of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Age Discrimination Act of 1975.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:694 (April 1999), repromulgated LR 31:2242 (September 2005).

§31507. Client Rights

A. The facility must comply with 42 CFR 483.420 and with the provisions below.

1. Each client must:

a. be fully informed by a physician of his health and medical condition unless the physician decides that informing the client is medically contraindicated;

b. be given the opportunity to participate in planning his total care and medical treatment;

c. be given the opportunity to refuse treatment; and

d. give informed, written consent before participating in experimental research.

2. If the physician decides that informing the client of his health and medical condition is medically contraindicated, he must document this decision in the client's record.

3. Each client must be transferred or discharged only in accordance with the discharge plans in the IHP (see Chapter 311, Health Services).

4. Each client must be:

a. encouraged and assisted to exercise his rights as a client of the facility and as a citizen; and

b. allowed to submit complaints or recommendations concerning the policies and services of the ICF/MR to staff or to outside representatives of the client's choice or both, free from restraining, interference, coercion, discrimination, or reprisal. This includes the right to due process.

5. Each client must be allowed to manage his personal financial affairs and taught to do so to the extent of individual capability. If a client requested assistance from the facility in managing his personal financial affairs:

a. the request must be in writing; and

b. the facility must comply with the record keeping requirements of Chapter 307, Subchapters A and B, Client Records and Facility Records.

6. Freedom from Abuse and Restraints

a. Each client must be free from physical, verbal, sexual or psychological abuse or punishment.

b. Each client must be free from chemical and physical restraints unless the restraints are used in accordance with §31303, Interventions to Manage Inappropriate Client Behavior.

7. Privacy

a. Each client must be treated with consideration, respect, and full recognition of his dignity and individuality.

b. Each client must be given privacy during treatment and care of personal needs.

c. Each client's records, including information in an automatic data base, must be treated confidentially.

d. Each client must give written consent before the facility may release information from his record to someone not otherwise authorized by law to receive it.

e. A married client must be given privacy during visits by his spouse.

NOTE: If both husband and wife are residents of the facility, they must be permitted to share a room.

8. No client may be required to perform services for the facility. Those clients who by choice work for the facility must be compensated for their efforts at prevailing wages and commensurate with their abilities.

9. Each client must be allowed to:

a. communicate, associate, and meet privately with individuals of his choice, unless this infringes on the rights of another client;

b. send and receive personal mail unopened; and

c. have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within his individual program plan.

10. Each client must be allowed to participate in social, religious, and community group activities.

11. Each client must be allowed to retain and use his personal possessions and clothing as space permits.

12. Each client may be allowed burial insurance policy(s). The facility administrator or designee, with the client's permission, may assist the resident in acquiring a burial policy, provided that the administrator, designee, or affiliated persons derive no financial or other benefit from the resident's acquisition of the policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 483.420.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:694 (April 1999), repromulgated LR 31:2243 (September 2005).

§31509. Violation of Rights

A. A person who submits or reports a complaint concerning a suspected violation of a client's rights or concerning services or conditions in an ICF/MR or who testifies in any administrative or judicial proceedings arising from such complaints will have immunity from any criminal or civil liability therefore, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justifiable issue of either law or fact by the complaining party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 483.420.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:694 (April 1999), repromulgated LR 31:2244 (September 2005).

Chapter 317. Complaints

§31701. Purpose and Scope

A. Under the provisions of R.S. 40:2009.13-40:2009.20 and 14:4032 federal regulation 42 CFR 483.405, 483.420, 483.440 and the state Operations Manual published by the Department of Health and Hospitals and Health Care Financing Administration, the following procedures are established for receiving, evaluating, investigating, and correcting grievances concerning client care in ICF/MR licensed and certified ICF/MR facilities. The procedures in this Chapter 317 also provide mandatory reporting of abuse and neglect in ICF/MR facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2009.13, R.S. 40:2009.20, R.S. 14:4032, Title XIX of the Social Security Act, 42 CFR 483.405, 483.420, and 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999), repromulgated LR 31:2244 (September 2005).

§31703. Applicability

A. Any person having knowledge of the alleged abuse or neglect of a client or knowledge of a client being denied care and treatment may submit a complaint, preferably in writing.

B. Any person may submit a complaint if he/she has knowledge that a state law, standard, rule, correction order, or certification rule issued by the Department of Health and Hospitals has been violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2009.13, R.S. 40:2009.20, R.S. 14:4032, Title XIX of the Social Security Act, 42 CFR 483.405, 483.420, and 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999), repromulgated LR 31:2244 (September 2005).

§31705. Duty to Report

A. All incidents or allegations of abuse and/or neglect must be reported by telephone or fax within 24 hours to DHH's Health Standards Section. This must be followed by a copy of the results of the facility's internal investigation within five working days. Complete investigative reports with all pertinent documents shall be maintained at the facility. Failure to submit this information timely could result in a deficiency and/or a sanction. Those who must make a report of abuse and/or neglect are:

1. physicians or other allied health professionals;
2. social services personnel;
3. facility administration;
4. psychological or psychiatric treatment personnel;
5. registered nurses;
6. licensed practical nurses; and
7. direct care staff.

B. Penalties for Failure to Make Complaint. Any person who knowingly and willfully fails to report an abuse or neglect situation shall be fined not more than $500 or imprisoned not more than two months or both. The same sanctions shall apply to an individual who knowingly and willingly files a false report. Penalties for committing cruelty or negligent mistreatment to a resident of a health care facility shall be not more than $10,000 or imprisoning with or without hard labor for more than 10 years, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2009.13, R.S. 40:2009.20, R.S. 14:4032, Title XIX of the Social Security Act, 42 CFR 483.405, 483.420, and 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999), repromulgated LR 31:2244 (September 2005).

§31707. Where to Submit Complaint

A. A complaint can be filed as follows:

1. it may be submitted in writing to the Health Standards Section at Box 3767, Baton Rouge, LA 70821-3767; or

2. it may be made by calling Health Standards Section at 1-888-810-1819, or (225) 342-0082, and the FAX number (225) 342-5292;

3. in addition, it may be submitted to any local law enforcement agency.

B. DHH's Referral of Complaints for Investigation

1. Complaints involving clients of ICF/MRs received by DHH shall be referred to the Health Standards Section.

2. If it has been determined that complaints involving alleged violations of any criminal law concerning a facility are valid, the investigating office of DHH shall furnish

copies of the complaints for further investigation to the Office of the Attorney General, Medicaid Fraud Control Unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2009.13, R.S. 40:2009.20, R.S. 14:4032, Title XIX of the Social Security Act, 42 CFR 483.405, 483.420, and 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999), repromulgated LR 31:2244 (September 2005).

§31709. Disposition of Complaints

A. After the investigation DHH may take any of the following actions.

1. Valid Complaint with Deficiencies Written. The Department of Health and Hospitals shall notify the administrator who must provide an acceptable plan of correction as specified below.

a. If it is determined that a situation presents a threat to the health and safety of the client, the facility shall be required to take immediate corrective action. DHH may certify noncompliance, revoke or suspend the license, or impose sanctions.

b. In all other instances of violation, an expeditious correction, not to exceed 90 days, shall be required. If the provider is unable or unwilling to correct the violation, DHH may take any of the actions listed in Subparagraph 1.a.

c. In cases of abuse and/or neglect, referral for appropriate corrective action shall be made to the Office of the Attorney General, Medicaid Fraud Control Unit.

2. Unsubstantiated Complaint. DHH shall notify the complainant and the facility of this finding.

3. Repeat Violations. When violations continue to exist after the corrective action was taken, the Department of Health and Hospitals may take any of the actions listed in Subparagraph 1.a.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2009.13, R.S. 40:2009.20, R.S. 14:4032, Title XIX of the Social Security Act, 42 CFR 483.405, 483.420, and 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999), repromulgated LR 31:2245 (September 2005).

§31711. Informal Reconsideration

A. A complainant or a facility dissatisfied with any action taken by DHH's response to the complaint investigation may request an informal reconsideration as provided in R.S. 40:2009.11 et seq.

B. Retaliation by ICF/MR Facility. Facilities are prohibited from taking retaliatory action against complainants. Persons aware of retaliatory action or threats in this regard should contact DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2009.13, R.S. 40:2009.20, R.S. 14:4032, Title XIX of the Social Security Act, 42 CFR 483.405, 483.420, and 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999), repromulgated LR 31:2245 (September 2005).

§31713. Tracking Incidents

A. For each client who is involved in an accident or incident, an incident report shall be completed including the name, date, time, details of accident or incident, circumstances under which it occurred, witnesses and action taken.

1. Incidents or accidents involving clients must be documented in the client's record. These records should also contain all pertinent medical information.

2. The examples listed below are not all inclusive, but are presented to serve as a guideline to assist those facility employees responsible for reporting incident reports.

a. Suspicious Death. Death of a client or on-duty employee when there is suspicion of death other than by natural causes.

b. Abuse and/or Neglect. All incidents or allegations of abuse and/or neglect.

c. Runaways. Runaways considered dangerous to self or others.

d. Law Enforcement Involvement. Arrest, incarceration, or other serious involvement of residents with law enforcement authorities.

e. Mass Transfer. The voluntary closing of a facility or involuntary mass transfer of residents from a facility.

f. Violence. Riot or other extreme violence.

g. Disasters. Explosions, bombings, serious fires.

h. Accidents/Injuries. Severe accidents or serious injury involving residents or on-duty employees caused by residents such as life threatening or possible permanent and/or causing lasting damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2009.13, R.S. 40:2009.20, R.S. 14:4032, Title XIX of the Social Security Act, 42 CFR 483.405, 483.420, and 483.440.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999), repromulgated LR 31:2245 (September 2005).

Chapter 319. Utilization Review

§31901. Utilization Review

A. If it is determined by HSS that continued stay is not needed, the client's attending physician or qualified mental retardation professional (QMRP) shall be notified within one working day and given two working days from the notification date to present his/her views before a final decision on continued stay is made.

B. If the attending physician or QMRP does not present additional information or clarification of the need for continued stay, the decision of the utilization review (UR) group is final.

C. If the attending physician or QMRP presents additional information or clarification, the need for continued stay is reviewed by the physician member(s) of the UR group in cases involving a medical determination.

D. The decision of the UR group is the final medical eligibility decision. Recourse for the client is to exercise his/her appeal rights according to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 456.350 through 456.438.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:700 (April 1999), repromulgated LR 31:2245 (September 2005).

Chapter 321. Appeals

§32101. Administrative Appeals

A. DHH reserves the right to reject a request for Title XIX participation, impose sanctions or terminate participation status when an ICF/MR:

1. fails to abide by the rules promulgated by DHH;
2. fails to obtain compliance or is otherwise not in compliance with Title VI of the Civil Rights Act;
3. engages in practice not in the best interest of Medicaid (Title XIX) clients;
4. has previously been sanctioned for violation of state and/or federal rules; or
5. has previously been decertified from participation as a Title XIX provider. Prior to such rejection or termination, DHH may conduct an Informal Reconsideration at the ICF/MR's request. The ICF/MR also has the right to an administrative appeal pursuant to the Administrative Procedure Act.

B. Informal Reconsideration. When an ICF/MR receives a written notification of adverse action and a copy of the findings upon which the decision was based, the ICF/MR may provide written notification to BHSF/HSS within 10 calendar days of receiving the notification, and request an Informal Reconsideration.

1. The ICF/MR may submit written documentation or request an opportunity to present oral testimony to refute the findings of DHH on which the adverse action is based.
2. DHH will review all oral testimony and documents presented by the ICF/MR and, after the conclusion of the Informal Reconsideration, will advise the ICF/MR in writing of the results of the reconsideration which may be that:
   a. the original decision has been upheld;
   b. the original decision has been modified; or
   c. the original decision has been reversed.

C. Evidentiary Hearing General Requirements. The ICF/MR may also request an administrative appeal. To request such an appeal, the facility must submit their request, in writing, within 30 days of the receipt of the adverse action to the Bureau of Appeals, Box 4183, Baton Rouge, LA 70821-4183. The Bureau of Appeals will attempt to conduct the hearing within 120 days of the original notice of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 431.151 - 431.154.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:700 (April 1999), repromulgated LR 31:2246 (September 2005).

§32103. Notice and Appeal Procedure

A. When DHH imposes a sanction on a health care provider, it will give the provider written notice of the imposition. The notice will be given by certified mail and will include the following:

1. the nature of the violation(s) and whether the violation(s) is classified as a repeat violation;
2. the legal authority that established the violation(s);
3. the civil fine assessed for each violation;
4. inform the administrator of the facility that the facility has 10 days from receipt of the notice within which to request an informal reconsideration of proposed sanction;
5. inform the administrator of the facility that the facility has 30 days from receipt of the notice within which to request an administrative appeal of the proposed sanction and that the request for an informal reconsideration does not extend the time limit for requesting an administrative appeal; and
6. inform the administrator of the facility that the consequences of failing to request an informal reconsideration and/or an administrative appeal will be that DHH's decision is final and that no further administrative or judicial review may be had.

B. The provider may request an informal reconsideration of DHH's decision to impose a civil fine. This request must be written and made to DHH within 10 days of receipt of the notice of the imposition of the fine.

1. This reconsideration will be conducted by designated employees of DHH who did not participate in the initial decision to recommend imposition of a sanction.
2. Oral presentation can be requested by the provider representative, and if requested, will be made to the designated employees.
3. Reconsideration will be made on the basis of documents and oral presentations made by the provider to the designated employees at the time of the reconsideration.
4. Correction of the deficient practice for which the sanction was imposed will not be the basis of the reconsideration.
5. The designated employees will only have the authority to confirm, reduce or rescind the civil fine.
6. DHH will notify the provider of the results of the reconsideration within 10 working days after the oral presentation.
7. This process is not in lieu of the administrative appeal and does not extend the time limits for filing an administrative appeal.

C. The facility may request an administrative appeal. If an administrative appeal is requested in a timely manner, the appeal will be held as provided in the Administrative Procedure Act (R.S. 49:950 et seq.) An appeal bond will be posted with the Bureau of Appeals as provided in R.S. 40:2199(D) or the provider may choose to file a devolutive appeal. A devolutive appeal means that the civil fine must be paid in full within 10 days of filing the appeal.

D. The provider may request judicial review of the administrative appeal decision as provided in the Administrative Procedure Act.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999), repromulgated LR 31:2246 (September 2005).

§32105. Collection of Fines

A. Fines are final when:

1. an appeal is not requested within the specified time limits;

2. the facility admits the violations and agrees to pay the fine; or

3. the administrative hearing affirms DHH's findings of violations and time for seeking judicial review has expired.

B. When civil fines become final, they will be paid in full within 10 days of their commencement unless DHH allows a payment schedule in light of documented financial hardship. Arrangements with DHH for a payment schedule must commence within 10 days of the fines becoming final. Interest will begin to accrue at the current judicial rate on the day the fines become final.

C. If payment of assessed fines is not received within the prescribed time period after becoming final and the provider is a Medicaid provider, DHH will deduct the full amount plus the accrued interest from money otherwise due to the provider as Medicaid reimbursement in its next (quarterly or monthly) payment. If the provider is not a Medicaid provider, DHH will institute civil actions as necessary to collect fines due.

D. No provider may claim imposed fines or interest as reimbursable costs, nor increase charges to residents, clients, or patients as a result of such fines or interest.

E. Civil fines collected will be deposited in the Health Care Facility Fund maintained by the state treasury.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999), repromulgated LR 31:2246 (September 2005).

Chapter 323. Sanctions

§32301. Noncompliance

A. When ICF/MRs are not in compliance with the requirements set forth in the ICF/MR Standards for Payment, DHH may impose sanctions. Sanctions may involve:

1. withholding of vendor payments;
2. civil fines;
3. denial of payments for new admissions; or
4. nonfinancial measures such as termination of the ICF/MR's certification as a Title XIX provider.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999) repromulgated LR 31:2247 (September 2005).

§32303. Authority

A. Public Law 95-142, dated October 25, 1977, permits the federal government's Health Care Financing Administration (HCFA) to impose a fine and/or imprisonment of facility personnel for illegal admittance and retention practices. HCFA is also authorized to terminate an agreement with a Title XIX ICF/MR provider as a result of deficiencies found during their surveys, which are re-reviews of the state's surveys. Furthermore, the federal government's Office of Inspector General (OIG) is authorized to terminate an agreement with a Title XIX ICF/MR provider for willful misrepresentation of financial facts or for not meeting professionally recognized standards of health care.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999), repromulgated LR 31:2247 (September 2005).

§32305. Special Staffing

A. When the secretary of DHH determines that additional staffing or staff with specific qualifications would be beneficial in correcting deficient practices, DHH may require a facility to hire additional staff on a full-time or consultant basis until the deficient practices have been corrected. This provision may be invoked in concert with, or instead of, the sanctions cited in §32307.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999), repromulgated LR 31:2247 (September 2005).

§32307. Withholding of Vendor Payments

A. Withholding of Vendor Payments. DHH may withhold vendor payments in whole or in part in the following situations, which are not all inclusive.

1. Delinquent Staffing Report. When the ICF/MR provider fails to timely submit a required, completed staffing report. After DHH notifies the provider of the delinquent report, vendor payment may be withheld until the completed report is received.

2. Unapproved Staffing Shortage. When a staffing report indicates an unapproved staffing shortage, vendor payment may be withheld until staffing is brought into compliance.

3. Incorrect/Inappropriate Charges. When DHH determines that the ICF/MR provider has incorrectly or inappropriately charged clients, families, or responsible parties, or there has been misapplication of client funds, vendor payment may be withheld until the provider does the following:

a. makes restitution; and

b. submits documentation of such restitution to BHSF's Institutional Reimbursement Section.

4. Delinquent Cost Report. When an ICF/MR provider fails to submit a cost report within 90 days from the fiscal year end closing date, a penalty of 5 percent of the total monthly payment for the first month and a progressive penalty of 5 percent of the total monthly payment for each succeeding month may be levied and withheld from the vendor's payment for each month that the cost report is due, not extended, and not received. The penalty is nonrefundable.

NOTE: DHH's Institutional Reimbursement Section may grant a 30-day extension of the 90-day time limit, when requested by the ICF/MR provider, if just cause has been established. Extensions beyond 30 days may be approved for situations beyond the ICF/MR provider's control.

5. Cost Reports Errors. Cost reports errors greater than 10 percent in the aggregate for the ICF/MR provider for the cost report year may result in a maximum penalty of 10

percent of the current per diem rate for each month the cost report errors are not correct. The penalty is nonrefundable.

6. Corrective Action for Audit Findings. Vendor payments may be withheld when an ICF/MR facility fails to submit corrective action in response to financial and compliance audit findings within 15 days after receiving the notification letter until such time compliance is achieved.

7. Failure to Respond or Adequately Respond to Requests for Financial/Statistical Information. When an ICF/MR facility fails to respond or adequately respond to requests from DHH for financial and statistical information within 15 days after receiving the notification letter, vendor payments may be withheld until such time the requested information is received.

8. Insufficient Medical Recertification. When an ICF/MR provider fails to secure recertification of a client's need for care and services, the vendor's payment for that individual may be withheld or recouped until compliance is achieved.

9. Inadequate Review/Revision of Plan of Care (IHP). When an ICF/MR provider repeatedly fails to ensure that an adequate plan of care for a client is reviewed and revised at least at required intervals, the vendor's payment may be withheld or recouped until compliance is achieved.

10. Failure to Submit Response to Survey Reports. When an ICF/MR provider fails to submit an acceptable response within 30 days after receiving a survey report from DHH, HCFA, OIG and the legislative auditor, vendor payments may be withheld until an adequate response is received, unless the appropriate agency extends the time limit.

11. Corrective Action on Complaints. When an ICF/MR fails to submit an adequate corrective action plan in response to a complaint within seven days after receiving the complaint report, vendor payments may be withheld until an adequate corrective action plan is received, unless the time limit is extended by the DHH.

12. Delinquent Utilization Data Requests. Facilities will be required to timely submit utilization data requested by the DHH. Providers will be given written notice when such utilization data has not been received by the due date. Such notice will advise the provider of the date the utilization data must be received by to avoid withholding of vendor payments. The due date will never be less than 10 days from the date the notice is mailed to the provider. If the utilization data is not received by the due date provided in the notice, the medical vendor's payment will be withheld until the utilization data is received.

13. Termination or Withdrawal from the Medicaid Program. When a provider is terminated or withdraws from the Medicaid Program, vendor payment will be withheld until all programmatic and financial issues are resolved.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999), repromulgated LR 31:2247 (September 2005).

§32309. Civil Fines

A. Louisiana R.S. 40:2199 authorized DHH to impose monetary sanctions on those health care facilities found to be out of compliance with any state or federal law or rule concerning the operation and services of the health care provider.

1. Any ICF/MR found to be in violation of any state or federal statute, regulation, or any Department of Health and Hospitals (DHH) rule adopted pursuant to the Act governing the administration and operation of the facility may be sanctioned as provided in the schedule of fines listed under Paragraph 2 below.

a. A *repeat violation* is defined as a violation of a similar nature as a previously cited violation that occurs within 18 months of the previously cited violation. DHH has the authority to determine when a violation is a *repeat violation.*

b. The opening or operation of a facility without a license or registration will be a misdemeanor, punishable upon conviction by a fine of not less than $1,000 nor more than $5,000.

i. Each day's violations will constitute a separate offense.

ii. On learning of such an operation, DHH will refer the facility to the appropriate authorities for prosecution.

c. Any ICF/MR found to have a violation that poses a threat to the health, safety, rights, or welfare of a resident or client may be liable for civil fines in addition to any criminal action that may be brought under other applicable laws.

B. Description of Violations and Applicable Civil Fines

1. Class A Violations

a. A Class A violation is a violation of a rule that creates a condition or occurrence relating to the maintenance or operation of a facility that results in death or serious harm to a resident or client. Examples of Class A violations include, but are not limited to:

i. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in the death of a resident or client; and

ii. acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in serious harm to a resident or client.

b. Civil fines for Class A violations may not exceed:

i. $2,500 for the first violation; or

ii. $5,000 per day for repeat violations.

2. Class B Violations

a. A Class B violation is a violation of a rule in which a condition or occurrence relating to the maintenance or operation of a facility is created that results in the substantial probability that death or serious harm to the client or resident will result if the condition or occurrence remains uncorrected. Examples of Class B violations include, but are not limited to, the following:

i. medications or treatments improperly administered or withheld;

ii. lack of functioning equipment necessary to care for clients;

iii. failure to maintain emergency equipment in working order;

iv. failure to employ a sufficient number of adequately trained staff to care for clients; and

v. failure to implement adequate infection control measures.

b. Civil fines for Class B violations may not exceed:

i. $1,500 for the first violation; or

ii. $3,000 per day for repeat violations.

3. Class C Violations

a. A Class C violation is a violation of a rule in which a condition or occurrence relating to the maintenance or operation of the facility is created that threatens the health, safety, or welfare of a client or resident. Examples of Class C violations include, but are not limited to, the following:

i. failure to perform treatments as ordered by the physician;

ii. improper storage of poisonous substances;

iii. failure to notify physician and family of changes in condition of the client or resident;

iv. failure to maintain equipment in working order;

v. inadequate supply of needed equipment;

vi. lack of adequately trained staff necessary to meet clients' needs; and

vii. failure to adhere to professional standards in giving care to the client.

b. Civil fines for Class C violations may not exceed:

i. $1,000 for the first violation;

ii. $2,000 per day for repeat violations.

4. Class D Violations

a. Class D violations are violations of rules related to administrative and reporting requirements that do not threaten the health, safety, rights, or welfare of a client or resident. Examples of Class D violations include, but are not limited to, the following:

i. failure to submit written reports of accidents;

ii. failure to timely submit a Plan of Correction;

iii. falsification of a record; and

iv. failure to maintain clients financial records as required by rules or regulations.

b. Civil fines for Class D violations may not exceed:

i. $100 for the first violation;

ii. $250 per day for repeat violations.

5. Class E Violations. Class E violations occur when a facility fails to submit a statistical or financial report in a timely manner when such a report is required by a rule.

a. Civil fines for Class E violations may not exceed:

i. $50 for the first violation;

ii. $100 per day for repeat violations.

C. Maximum Amount for a Civil Fine

1. The aggregate fines assessed for violations determined in any one month may not exceed $10,000 for a Class A and Class B violations.

2. The aggregate fines assessed Class C, Class D, and Class E violations determined in any one month may not exceed $5,000.

D. DHH will have the authority to determine whether a violation is a repeat violation and sanction the provider accordingly. Violations may be considered repeat violations by DHH when the following conditions exist:

1. when DHH has established the existence of a violation as of a particular date and the violation is one that may be reasonably expected to continue until corrective action is taken, DHH may elect to treat said continuing violation as a repeat violation subject to appropriate fines for each day following the date on which the initial violation is established, until such time as there is evidence that the violation has been corrected; or

2. when DHH has established the existence of a violation and another violation that is the same or substantially similar to the cited violation occurs within 18 months, the second and all similar subsequent violations occurring within the 18-month time period will be considered repeat violations and sanctioned accordingly.

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 Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999), repromulgated LR 31:2248 (September 2005).

Chapter 325. Decertification

§32501. Termination of Certification

A. An ICF/MR may voluntarily or involuntarily lose its participating status in the Medical Assistance Program.

B. Reasons for Decertification of an ICF/MR

1. The ICF/MR may voluntarily withdraw from the program for reasons of its own. The owner and administrator will submit a written notice of withdrawal to the DHH's HSS at least 60 days in advance.

2. A new owner may decide against participation in the program. A written 60-day notice of withdrawal will be submitted to DHH's HSS.

3. DHH may decertify an ICF/MR for failure to comply with Title XIX standards, thus canceling the facility's provider agreement.

4. DHH may decertify an ICF/MR if deficiencies pose immediate jeopardy to the client's health, safety, rights, or welfare.

5. The ICF/MR may allow its provider agreement to expire. A written 60-day advance notice of withdrawal will be submitted to the DHH's HSS.

6. DHH may cancel the provider agreement if and when it is determined that the ICF/MR is in material breach of the contract.

C. Recertification of an Involuntarily Decertified ICF/MR. After involuntary decertification, an ICF/MR cannot participate as a medical assistance provider unless the following conditions are met:

1. the reasons for the decertification or nonrenewal of the contract no longer exist;

2. reasonable assurance exists that the factors causing the decertification will not recur;

3. the ICF/MR demonstrates compliance with the required standards for a 60-day period prior to reinstatement in a participating status; and

4. a professional medical review reports that clients are receiving proper care and services.

D. Denial of Payments for New Admissions

1. New Admissions. New admissions refer to the admission of a person who has never been a Title XIX client in the ICF/MR or, if previously admitted, had been discharged or had voluntarily left the ICF/MR. This term does not include the following:

a. individuals who were in the ICF/MR before the effective date of denial of payment for new admissions, even if they become eligible for Title XIX after that date;

b. individuals who, after a temporary absence from the ICF/MR, are readmitted to beds reserved for them in accordance with the admission process.

2. Basis for Denial of Payment. DHH may deny payment for new admissions to an ICF/MR that no longer meets applicable requirements as specified in these standards.

a. ICF/MR's deficiencies do not pose immediate jeopardy (serious threat). If DHH finds that the ICF/MR's deficiencies do not pose immediate jeopardy to clients' health, safety, rights, or welfare, DHH may either terminate the ICF/MRs provider agreement or deny payment for new admissions.

b. ICF/MR's deficiencies do pose immediate jeopardy (serious threat). If DHH finds that the ICF/MR's deficiencies do pose immediate jeopardy to clients' health, safety, rights, or welfare, and thereby terminates the ICF/MR's provider agreement, DHH may additionally seek to impose the denial of payment for new admissions.

3. DHH Procedures. Before denying payments for new admissions, DHH will be responsible for the following:

a. providing the ICF/MR a time frame of up to 60 days to correct the cited deficiencies and comply with the standards for ICF/MRs;

b. giving the ICF/MR notice of the intent to deny payment for new admissions and an opportunity to request an Informal Reconsideration if the facility has not achieved compliance at the end of the 60-day period;

c. providing an informal hearing if requested by the ICF/MR that included the following:

i. giving the ICF/MR the opportunity to present before a state Medicaid official not involved in the initial determination, evidence or documentation, in writing or in person, to refute the decision that the ICF/MR is out of compliance with the applicable standards for participation; and

ii. submitting a written decision setting forth the factual and legal basis pertinent to a resolution of the dispute.

d. providing the facility and the public at least 15 days advance notice of the effective date of the sanction and reasons for the denial of payments for new admissions should the informal hearing decision be adverse to the ICF/MR.

4. Duration of Denial of Payments and Subsequent Termination

a. Period of Denial. The denial of payments for new admissions will continue for 11 months after the month it was imposed unless, before the end of that period, DHH determines:

i. the ICF/MR has corrected the deficiencies or is making a good faith effort to achieve compliance with the standards for ICF/MR participation; or

ii. the deficiencies are such that it is now necessary to terminate the ICF/MR's provider agreement.

b. Subsequent Termination. DHH must terminate an ICF/MR's provider agreement under the following conditions:

i. upon finding that the ICF/MR has been unable to achieve compliance with the standards for participation during the period that payments for new admissions had been denied;

ii. effective the day following the last day of the denial of payments;

iii. in accordance with the procedures for appeal of termination set forth in Chapter 321, Appeals.

E. Examples of Situations Determined to Pose Immediate Jeopardy (Serious Threat). Listed below are some examples of situations determined to pose immediate jeopardy (serious threat) to the health, safety, rights, and welfare of clients in ICF/MR. These examples are not intended to be all inclusive. Other situations adversely affecting clients could constitute sufficient basis for the imposition of sanctions.

1. Poisonous Substances. An ICF/MR fails to provide proper storage of poisonous substances, and this failure results in death of or serious injury to a client or directly threatens the health, safety, or welfare of a client.

2. Falls. An ICF/MR fails to maintain required direct care staffing and/or a safe environment as set forth in the regulations, and this failure directly causes a client to fall resulting in death or serious injury or directly threatens the health, safety, or welfare of a client. Examples:

a. equipment not properly maintained; or

b. personnel not responding to a client's request for assistance.

3. Assaults

a. By Other Clients. An ICF/MR fails to maintain required direct care staffing and fails to take measures when it is known that a client is combative and assaultive with other clients, and this failure causes an assault upon another client, resulting in death or serious injury or directly threatens the health, safety, and welfare of another client.

b. By Staff. An ICF/MR fails to take corrective action (termination, legal action) against an employee who has a history of client abuse and assaults a client causing death or the situation directly threatens the health, safety, and welfare of a client.

4. Physical Restraints Resulting in Permanent Injury. ICF/MR personnel improperly apply physical restraints contrary to published regulations or fail to check and release restraints as directed by regulations or physician's written instructions, and such failure results in permanent injury to a client's extremity or death or directly threatens the health, safety and welfare of a client.

5. Control of Infections. An ICF/MR fails to follow or meet infection control standards as ordered in writing by the physician, and this failure results in infections leading to the death of or serious injury to a client or directly threatens the health, safety, and welfare of a client.

6. Medical Care

a. An ICF/MR fails to secure proper medical assistance for a client, and this failure results in the death of or serious injury to the client.

b. A client's condition declined and no physician was informed, and this failure directly threatens the health, safety, or welfare of the client. This would also include the following:

i. failure to follow up on unusual occurrences of negative findings;

ii. failure to obtain information regarding appropriate care before and after a client's hospitalization;

iii. failure to timely hospitalize a client during a serious illness.

c. ICF/MR personnel have not followed written physician's orders, and this failure directly threatens the health, safety, or welfare of a client. This includes failure to fill prescriptions timely.

7. Natural Disaster/Fire. An ICF/MR fails to train its staff members in disaster/fire procedures as required by state rules for licensing of ICF/MRs or an ICF/MR fails to meet staffing requirements, and such failures result in the death of or serious injury to a client during natural disaster, fire or directly threatens the health, safety, or welfare of a client.

8. Decubitus Ulcers (Bed Sores). An ICF/MR fails to follow decubitus ulcer care measures in accordance with a physician's written orders, and such failure results in the death of, serious injury to, or discomfort of the client or directly threatens the health, safety, and welfare of a client.

9. Elopement. An ICF/MR fails to provide necessary supervision of its clients or take measures to prevent a client with a history of elopement problems from wandering away and such failure results in the death of or serious harm to the client or directly threatens the health, safety, and welfare of the client. Examples of preventive measures include, but are not limited to:

a. documentation that the elopement problem has been discussed with the client's family and the Interdisciplinary Team; and

b. that personnel have been trained to make additional efforts to monitor these clients.

10. Medications

a. An ICF/MR knowingly withholds a client's medications and such actions results in the death of or serious harm to the client or directly threatens the health, safety, and welfare of the client;

NOTE: The client does have the right to refuse medications. Such refusal must be documented in the client's record and brought to the attention of the physician and ID team.

b. medication omitted without justification;

c. excessive medication errors;

d. improper storage of narcotics or other prescribed drugs, mishandling of drugs or other pharmaceutical problems.

11. Environment/Temperature. An ICF/MR fails to reasonably maintain its heating and air-conditioning system as required by regulations, and this failure results in the death of, serious harm to, or discomfort of a client or creates the possibility of death or serious injury. Isolated incidents of breakdown or power failure will not be considered immediate jeopardy.

12. Improper Treatments

a. ICF/MR personnel knowingly perform treatment contrary to a physician's order, and such treatment results in the death of or serious injury to the client or directly threatens the health, safety, and welfare of the client.

b. An ICF/MR fails to feed clients who are unable to feed themselves as set forth in physician's instructions.

NOTE: Meals should be served at the required temperature.

c. An ICF/MR fails to obtain a physician's order for use of chemical or physical restraints; the improper application of a physical restraint; or failure of facility personnel to check and release the restraints periodically as specified in state regulations.

13. Life Safety. An ICF/MR knowingly fails to maintain the required Life Safety Code System such as:

a. properly functioning sprinklers, fire alarms, smoke sensors, fire doors, electrical wiring;

b. the practice of fire or emergency evacuation plans; or

c. stairways, hallways and exits free from obstruction; and noncompliance with these requirements results in the death of or serious injury to a client or directly threatens the health, safety, and welfare of a client.

14. Staffing. An ICF/MR consistently fails to maintain minimum staffing that directly threatens the health, safety, or welfare of a client. Isolated incidents where the facility does not maintain staffing due to personnel calling in sick or other emergencies are excluded.

15. Dietary Services. An ICF/MR fails to follow the minimum dietary needs or special dietary needs as ordered by a physician, and failure to meet these dietary needs threatens the health, safety or welfare of a client. The special diets must be prepared in accordance with physician's orders or a diet manual approved by the American Dietary Association.

16. Sanitation. An ICF/MR fails to maintain state and federal sanitation regulations, and those violations directly affect and threaten the health, safety, or welfare of a client. Examples are:

a. strong odors linked to a lack of cleanliness;

b. dirty buildup on floors and walls;

c. dirty utensils, glasses and flatware;

d. insect or rodent infestation.

17. Equipment and Supplies. An ICF/MR fails to provide equipment and supplies authorized in writing by a physician as necessary for a client's care, and this failure directly threatens the health, safety, welfare or comfort of a client.

18. Client Rights

a. An ICF/MR violates its clients' rights and such violations result in the clients' distress to such an extent that their psychosocial functions are impaired or such violations directly threaten their psychosocial functioning. This includes psychological abuse.

b. The ICF/MR permits the use of corporal punishment.

c. The ICF/MR allows the following responses to clients by staff members and employment supervisors:

i. physical exercise or repeated physical motions;

ii. excessive denial of usual services;

iii. any type of physical hitting or other painful physical contacts except as required by medical, dental, or first aid procedures necessary to preserve the individual's life or health;

iv. requiring the individual to take on an extremely uncomfortable position;

v. verbal abuse, ridicule, or humiliation;

vi. requiring the individual to remain silent for a long period of time;

vii. denial of shelter, warmth, clothing or bedding; or

viii. assignment of harsh physical work.

d. The ICF/MR fails to afford the client with the opportunity to attend religious services.

e. The ICF/MR denies the client the right to bring his or her personal belongings to the program, to have access, and to acquire belongings in accordance with the service plan.

f. The ICF/MR denies a client a meal without a doctor's order.

g. The ICF/MR does not afford the client with suitable supervised opportunities for interaction with members of the opposite sex, except where a qualified professional responsible for the formulation of a particular individual's treatment/habilitation plan writes an order to the contrary and explains the reasons.

NOTE: The secretary of DHH has the final authority to determine what constitutes "immediate jeopardy" or serious threat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 442.12-442.117.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (Apri 1999), repromulgated LR 31:2249 (September 2005).

Chapter 327. Emergency Awareness

§32701. Disaster Preparedness

A. Written Plans. ICFs/MR shall have written procedures complete with instructions to be followed in the event of an internal or external disaster such as fire or other emergency actions, including:

1. specifications of evacuation routes and procedures;

2. instructions for the care of injuries and/or casualties (client and personnel) arising from such disaster;

3. procedures for the prompt transfer of records;

4. instructions regarding methods of containing fire; and

5. procedures for notification of appropriate persons.

B. Employee Training. All ICF/MR employees shall be trained in disaster preparedness as part of employment orientation. The disaster preparedness training shall include orientation, ongoing training, and drills for all personnel. The purpose shall be that each employee promptly and correctly carry out his/her specific role in the event of a disaster. The facility shall periodically rehearse these procedures for disaster preparedness. The minimum requirements shall be drills once each quarter for each shift.

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 30:1702 (August 2004), repromulgated LR 31:2252 (September 2005)..

Chapter 329. Reimbursement

Subchapter A. Reimbursement Methodology

§32901. Cost Reports

A. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) are required to file annual cost reports to the bureau in accordance with the following instructions.

1. Each ICF-MR is required to report all reasonable and allowable costs on a regular facility cost report including any supplemental schedules designated by the bureau.

2. Separate cost reports must be submitted by central/home offices and habilitation programs when costs of those entities are reported on the facility cost report.

B. Cost reports must be prepared in accordance with cost reporting instructions adopted by the bureau using definitions of allowable and nonallowable cost contained in the Medicare provider reimbursement manual unless other definitions of allowable and nonallowable cost are adopted by the bureau.

1. Each provider shall submit an annual cost report for fiscal year ending June 30. The cost reports shall be filed within 90 days after the state's fiscal year ends.

2. Exceptions. Limited exceptions for extensions to the cost report filing requirements will be considered on an individual facility basis upon written request by the provider to the Medicaid director or designee. Providers must attach a statement describing fully the nature of the exception request. The extension must be requested by the normal due date of the cost report.

C. Direct Care Floor

1. A facility wide direct care floor may be enforced upon deficiencies related to direct care staffing requirements noted during the HSS annual review or during a complaint investigation in accordance with LAC 50:I.5501 et seq.

2. For providers receiving pervasive plus supplements, the facility wide direct care floor is established at 94 percent of the per diem direct care payment and the pervasive plus supplement. The direct care floor will be applied to the cost reporting year in which the facility receives a pervasive plus supplement. In no case, however, shall a facility receiving a pervasive plus supplement have total facility payments reduced to less than 104 percent of the total facility cost as a result of imposition of the direct care floor.

3. For facilities for which the direct care floor applies, if the direct care cost the facility incurred on a per diem basis is less than the appropriate facility direct care floor, the facility shall remit to the bureau the difference between these two amounts times the number of facility Medicaid days paid during the cost reporting period. This remittance shall be payable to the bureau upon submission of the cost report.

4. Upon completion of desk reviews or audits, facilities will be notified by the bureau of any changes in amounts due based on audit or desk review adjustments.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2252 (September 2005).

§32903. Rate Determination

A. Resident per diem rates are calculated based on information reported on the cost report. ICFs-MR will receive a rate for each resident. The rates are based on cost components appropriate for an economic and efficient ICF-MR providing quality service. The resident per diem rates represent the best judgment of the state to provide reasonable and adequate reimbursement required to cover the costs of economic and efficient ICFs-MR.

B. The cost data used in setting base rates will be from the latest available audited or desk reviewed cost reports. The initial rates will be adjusted to maintain budget neutrality upon transition to the ICAP reimbursement methodology. For rate periods between rebasing, the rates will be trended forward using the index factor contingent upon appropriation by the legislature.

C. For dates of service on or after August 1, 2005, a resident's per diem rate will be the sum of:

1. direct care per diem rate;
2. care related per diem rate;
3. administrative and operating per diem rate;
4. capital rate; and
5. provider fee.

D. Determination of Rate Components

1. The direct care per diem rate shall be a set percentage over the median adjusted for the acuity of the resident based on the ICAP, tier based on peer group. The direct care per diem rate shall be determined as follows.

a. Median Cost. The direct care per diem median cost for each ICF-MR is determined by dividing the facility's total direct care costs reported on the cost report by the facility's total days during the cost reporting period. Direct care costs for providers in each peer group are arrayed from low to high and the median (50th percentile) cost is determined for each peer group.

b. Median Adjustment. The direct care component shall be adjusted to 105 percent of the direct care per diem median cost in order to achieve reasonable access to care.

c. Inflationary Factor. These costs shall be trended forward from the midpoint of the cost report period to the midpoint of the rate year using the index factor.

d. Acuity Factor. Each of the ICAP levels will have a corresponding acuity factor. The median cost by peer group, after adjustments, shall be further adjusted by the acuity factor (or multiplier) as follows.

ICAP Support Level	Acuity Factor (Multiplier)
Pervasive	1.35
Extensive	1.17
Limited	1.00
Intermittent	.90

2. The care related per diem rate shall be a statewide price at a set percentage over the median and shall be determined as follows.

a. Median Cost. The care related per diem median cost for each ICF-MR is determined by dividing the facility's total care related costs reported on the cost report by the facility's actual total resident days during the cost reporting period. Care related costs for all providers are arrayed from low to high and the median (50th percentile) cost is determined.

b. Median Adjustment. The care related component shall be adjusted to 105 percent of the care related per diem median cost in order to achieve reasonable access to care.

c. Inflationary Factor. These costs shall be trended forward from the midpoint of the cost report period to the midpoint of the rate year using the index factor.

3. The administrative and operating per diem rate shall be a statewide price at a set percentage over the median, tier based on peer group. The administrative and operating component shall be determined as follows.

a. Median Cost. The administrative and operating per diem median cost for each ICF-MR is determined by dividing the facility's total administrative and operating costs reported on the cost report by the facility's actual total resident days during the cost reporting period. Administrative and operating costs for all providers are arrayed from low to high and the median (50th percentile) cost is determined.

b. Median Adjustment. The administrative and operating component shall be adjusted to 103 percent of the administrative and operating per diem median cost in order to achieve reasonable access to care.

c. Inflationary Factor. These costs shall be trended forward from the midpoint of the cost report period to the midpoint of the rate year using the index factor.

4. The capital per diem rate shall be a statewide price at a set percentage over the median, tier based on peer group. The capital per diem rate shall be determined as follows.

a. Median Cost. The capital per diem median cost for each ICF-MR is determined by dividing the facility's total capital costs reported on the cost report by the facility's actual total resident days during the cost reporting period. Capital costs for providers of each peer group are arrayed from low to high and the median (50th percentile) cost is determined for each peer group.

b. Median Adjustment. The capital cost component shall be adjusted to 103 percent of the capital per diem median cost in order to achieve reasonable access to care.

c. Inflationary Factor. Capital costs shall not be trended forward.

d. The provider fee shall be calculated by the department in accordance with state and federal rules.

E. The rates for the 1-8 bed peer group shall be set based on costs in accordance with §32903.B-D.4.d. The reimbursement rates for peer groups of larger facilities will also be set in accordance with §32903.B-D.4.d; however, the rates will be limited as follows.

1. The 9-15 peer group reimbursement rates will be limited to 95 percent of the 1-8 bed peer group reimbursement rates.

2. The 16-32 bed peer group reimbursement rates will be limited to 95 percent of the 9-15 bed peer group reimbursement rates.

3. The 33 and greater bed peer group reimbursement rates will be set in accordance with §32903.B-D.4.d, limited to 95 percent of the 16-32 bed peer group reimbursement rates.

F. Rebasing of rates will occur at least every three years utilizing the most recent audited and/or desk reviewed cost reports.

G. Adjustments to the Medicaid daily rate may be made when changes occur that eventually will be recognized in

updated cost report data (such as a change in the minimum wage or FICA rates). These adjustments would be effective until such time as the data base used to calculate rates fully reflect the change. Adjustments to rates may also be made when legislative appropriations would increase or decrease the rates calculated in accordance with this rule. The secretary of the Department of Health and Hospitals makes the final determination as to the amount and when adjustments to rates are warranted.

H. A facility requesting a pervasive plus rate supplement shall bear the burden of proof in establishing the facts and circumstances necessary to support the supplement in a format and with supporting documentation specified by the DHH ICAP Review Committee.

1. The DHH ICAP Review Committee shall make a determination of the most appropriate staff required to provide requested supplemental services.

2. The amount of the Pervasive Plus supplement shall be calculated using the Louisiana Civil Service pay grid for the appropriate position as determined by the DHH ICAP Review Committee and shall be the 25th percentile salary level plus 20 percent for related benefits times the number of hours approved.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2253 (September 2005).

§32905. ICAP Requirements

A. An ICAP must be completed for each recipient of ICF-MR services upon admission and while residing in an ICF-MR in accordance with departmental regulations.

B. Providers must keep a copy of the recipient's current ICAP protocol and computer scored summary sheets in the recipient's file. If a recipient has changed ICAP service level, providers must also keep a copy of the recipient's ICAP protocol and computer scored summary sheets supporting the prior level.

C. ICAPs must reflect the resident's current level of care.

D. Providers must submit a new ICAP to the Regional Health Standards office when the resident's condition reflects a change in the ICAP level that indicates a change in reimbursement.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1593 (July 2005), repromulgated LR 31:2254 (September 2005).

§32907. ICAP Monitoring

A. ICAP scores and assessments will be subject to review by DHH and its contracted agents. The reviews of ICAP submissions include, but are not limited to:

1. reviews when statistically significant changes occur within an ICAP submission or submissions;

2. random selections of ICAP submissions;

3. desk reviews of a sample of ICAP submissions; and

4. on-site field reviews of ICAPs.

B. ICAP Review Committee

1. Requests for Pervasive Plus must be reviewed and approved by the DHH ICAP Review Committee.

2. The ICAP Review Committee shall represent DHH should a provider request an informal reconsideration regarding the Regional Health Standards' determination.

3. The ICAP Review Committee shall make final determination on any ICAP level of care changes prior to the appeals process.

4. The ICAP Review Committee shall be made up of the following:

a. the director of the Health Standards Section or his/her appointee;

b. the director of Rate and Audit Review Section or his/her appointee;

c. the assistant secretary for the Office for Citizens with Developmental Disabilities or his/her appointee;

d. other persons as appointed by the secretary.

C. When an ICAP score is determined to be inaccurate, the department shall notify the provider and request documentation to support the level of care. If the additional information does not support the level of care, an ICAP rate adjustment will be made to the appropriate ICAP level effective the first day of the month following the determination.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1594 (July 2005), repromulgated LR 31:2254 (September 2005).

§32909. Audits

A. Each ICF-MR shall file an annual facility cost report and a central office cost report.

B. ICF-MR shall be subject to financial and compliance audits.

C. All providers who elect to participate in the Medicaid Program shall be subject to audit by state or federal regulators or their designees. Audit selection for the department shall be at the discretion of DHH.

1. A representative sample of the ICF-MR shall be fully audited to ensure the fiscal integrity of the program and compliance of providers with program regulations governing reimbursement.

2. Limited scope and exception audits shall also be conducted as determined by DHH.

3. DHH conducts desk reviews of all the cost reports received. DHH also conducts on-site audits of provider records and cost reports.

a. DHH seeks to maximize the number of on-site audited cost reports available for use in its cost projections although the number of on-site audits performed each year may vary.

b. Whenever possible, the records necessary to verify information submitted to DHH on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHH audit staff in the state of Louisiana.

D. Cost of Out-of-State Audits

1. When records are not available to DHH audit staff within Louisiana, the provider must pay the actual costs for DHH staff to travel and review the records out-of-state.

2. If a provider fails to reimburse DHH for these costs within 60 days of the request for payment, DHH may place a hold on the vendor payments until the costs are paid in full.

E. In addition to the exclusions and adjustments made during desk reviews and on-site audits, DHH may exclude or adjust certain expenses in the cost-report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

F. The facility shall retain such records or files as required by DHH and shall have them available for inspection for five years from the date of service or until all audit exceptions are resolved, whichever period is longer.

G. If DHH s auditors determine that a facility s records are unauditable, the vendor payments may be withheld until the facility submits an acceptable plan of correction to reconstruct the records. Any additional costs incurred to complete the audit shall be paid by the provider.

H. Vendor payments may also be withheld under the following conditions:

1. a facility fails to submit corrective action plans in response to financial and compliance audit findings within 15 days after receiving the notification letter; or

2. a facility fails to respond satisfactorily to DHH s request for information within 15 days after receiving the department s letter.

I. If DHH s audit of the residents personal funds account indicate a material number of transactions were not sufficiently supported or material noncompliance, then DHH shall initiate a full scope audit of the account. The cost of the full scope audit shall be withheld from the vendor payments.

J. The ICF-MR shall cooperate with the audit process by:

1. promptly providing all documents needed for review;

2. providing adequate space for uninterrupted review of records;

3. making persons responsible for facility records and cost report preparation available during the audit;

4. arranging for all pertinent personnel to attend the exit conference;

5. insuring that complete information is maintained in client's records; and

6. correcting areas of noncompliance with state and federal regulations immediately after the exit conference time limit of 15 days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1594 (July 2005), repromulgated LR 31:2254 (September 2005).

§32911. Exclusions from Database

A. Providers with disclaimed audits and providers with cost reports for other than a 12-month period will be excluded from the database used to calculate the rates.

B. Providers who do not submit ICAP scores will be paid at the Intermittent level until receipt of ICAP scores.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1594 (July 2005), repromulgated LR 31:2255 (September 2005).

§32913. Leave Days

A. The reimbursement for hospital leave days is 75 percent of the applicable ICF/MR per diem rate.

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 27:57 (January 2001), repromulgated LR 31:2255 (September 2005).

Subchapter B. Qualifying Loss Review (Private Facilities)

§32949. Basis for Administrative Review

A. The following is the qualifying loss review process for private ICF/MR facilities seeking an adjustment to their per diem rates.

B. Allowable Basis. The following matters are subject to a qualifying loss review:

1. that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied;

2. that incorrect data or erroneous calculations were used;

3. the facility demonstrates that the estimated reimbursement based on its prospective rate is less than 95 percent of the estimated costs to be incurred by the facility in providing Medicaid services during the period the rate is in effect in compliance with the applicable state and federal laws related to quality and safety standards.

C. Nonallowable Basis. The following matters are not subject to a qualifying loss review:

1. the methodology used to establish the per diem;

2. the use of audited and/or desk reviews to determine allowable costs;

3. the economic indicators used in the rate setting methodology;

4. rate adjustments related to changes in federal or state laws, rules or regulations(e.g., minimum wage adjustments);

5. rate adjustments related to reduction or elimination of extraordinary rates.

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 24:66 (January 1998), repromulgated LR 31:2255 (September 2005).

§32951. Request for Administrative Review

A. Any intermediate care facility for the mentally retarded (hereafter referred to as facility) seeking an adjustment to the per diem rate shall submit a written request for administrative review to the director of Institutional Reimbursements (hereafter referred to as director) in the Department of Health and Hospitals (hereafter referred to as department).

B. Time Frames

1. Requests for administrative review must be received by DHH within 30 days of either receipt of notification of rate reduction or promulgation of this rule, whichever is later. The receipt of the letter notifying the facility of its rates will be deemed to be five days from the date of the letter.

2. The department shall acknowledge receipt of the written request within 30 days after actual receipt.

3. The director shall notify the facility of his decision within a reasonable time after receipt of all necessary documentation, including additional documentation or

information requested after the initial request is received. Failure to provide a decision within a reasonable time does not imply approval.

4. If the facility wishes to appeal the director s decision, the appeal request must be received by the Bureau of Appeals within 30 days after receipt of the written decision of the director. The receipt of the decision is deemed to be five days from the date of the decision.

C. Content of the Request. The facility shall bear the burden of proof in establishing the facts and circumstances necessary to support a rate adjustment. Any costs the provider cites as a basis for relief under this provision must be calculable and auditable.

1. Basis of the Request. Any facility seeking an adjustment to the per diem rate must specify all of the following:

a. the nature of the adjustment sought;

b. the amount of the adjustment sought;

c. the reasons or factors that the facility believes justify an adjustment.

2. Financial Analysis. An analysis demonstrating the extent to which the facility is incurring or expects to incur a qualifying loss shall be provided by the facility unless the basis for review is one of the following:

a. the rate setting methodology or criteria for classifying facilities was incorrectly applied; or

b. incorrect data or erroneous calculations were used in establishment of the facility s per diem; or

c. the facility has incurred additional costs because of a catastrophe.

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 24:66 (January 1998), repromulgated LR 31:2255 (September 2005).

§32953. Basis for Rate Adjustment

A. Factors Considered. The department shall award additional reimbursement to a facility that demonstrates by substantiating evidence that:

1. the facility will incur a qualifying loss;

2. the loss will impair a facility s ability to provide services in accordance with state and federal health and safety standards;

3. the facility has satisfactorily demonstrated that it has taken all appropriate steps to eliminate management practices resulting in unnecessary expenditures; and

4. the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility s bed size LOC.

B. Determination to Award Relief. In determining whether to award additional reimbursement to a facility that has made the showing required, the director shall consider one or more of the factors and may take any of the actions:

1. the director shall consider whether the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility s bed size LOC. Such factors may include, but are not limited to, extraordinary circumstances beyond the control of the facility; or

2. the director may consider, and may require the facility to provide financial data including, but not limited to, financial ratio data indicative of the facility s performance quality in particular areas of operations; or

3. the director shall consider whether the facility has taken every reasonable action to contain costs on a facility-wide basis. In making such a determination the director may require the facility to provide audited cost data or other quantitative data and information about actions that the facility has taken to contain costs.

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 24:66 (January 1998), repromulgated LR 31:2256 (September 2005).

§32955. Awarding Relief

A. The director shall make notification of the decision to award or not award relief in writing.

1. Basis of Adverse Decision

a. The director may determine that the review request is not within the scope of the purpose for qualifying loss review.

b. The director may determine that the information presented does not support the request for rate adjustment.

2. Adverse Decision Appeal. Adverse decisions may be appealed to the Office of the Secretary, Bureau of Appeals for the Department of Health and Hospitals, P.O. Box 4183, Baton Rouge, LA 70821-4183 within 30 days of receipt of the decision.

3. Awarding Relief

a. Action by Director. In awarding relief under this provision, the director shall:

i. make any necessary adjustment so as to correctly apply the reimbursement methodology to the facility submitting the appeal, or to correct calculations, data errors or omissions; or

ii. increase the facility s per diem rate by an amount that can reasonably be expected to ensure continuing access to sufficient services of adequate quality for Title XIX Medicaid recipients served by the facility.

b. Scope of Decisions. Decisions by the director to recognize omitted, additional or increased costs incurred by any facility; to adjust the facility rates; or to otherwise award additional reimbursement to any facility shall not result in any change in the bed size LOC per diem for the remaining facilities in the bed size LOC, except that the department may adjust the per diem if the facilities receiving adjustment comprises over 10 percent of total utilization for that bed size LOC based on the latest audited and/or desk reviewed cost reports.

c. Effective Date. The effective date of the adjustment shall be the later of:

i. the date of occurrence of the rate change upon which the rate appeal is in response; or

ii. the effective date of this rule.

d. Limitations. The director shall not award relief to provider in excess of 95 percent of appellant facility s cost coverage determined by inflationary trending of the year on which rates are based. The rate adjustment shall also be limited to no more than the amount of the rate for the previous rate year. Any facility awarded relief shall be audited and cost settled up to, but not over, the amount of the adjusted rate. Should a single facility that is an entity under common ownership or control with another facility or group

of facilities be awarded relief, all facilities under common ownership or control with the facility awarded relief will be subject to audit and cost settlement up to, but not over, the amount of their rates.

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 24:66 (January 1998), repromulgated LR 31:2256 (September 2005).

Chapter 331. Vendor Payments

§33101. Income Consideration in Determining Payment

A. Clients receiving care under Title XIX. The client's applicable income (liability) will be determined when computing the ICF/MR's vendor payments. Vendor payments are subject to the following conditions.

1. Vendor payments will begin with the first day the client is determined to be categorically and medically eligible or the date of admission, whichever is later.

2. Vendor payment will be made for the number of eligible days as determined by the ICF/MR per diem rate less the client's per diem applicable income.

3. If a client transfers from one facility to another, the vendors' payment to each facility will be calculated by multiplying the number of eligible days times the ICF/MR per diem rate less the client's liability.

B. Client Personal Care Allowance. The ICF/MR will not require that any part of a client's personal care allowance be paid as part of the ICF/MR's fee. Personal care allowance is an amount set apart from a client's available income to be used by the client for his/her personal use. The amount is determined by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:682 (April 1999), repromulgated LR 31:2257 (September 2005).

§33103. Payment Limitations

A. Temporary Absence of the Client. A client's temporary absence from an ICF/MR will not interrupt the monthly vendor payment to the ICF/MR, provided the following conditions are met:

1. the ICF/MR keeps a bed available for the client's return; and

2. the absence is for one of the following reasons:

a. hospitalization, which does not exceed seven days per hospitalization; or

b. leave of absence. A temporary stay outside the ICF/MR provided for in the client's written individual habilitation plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30) and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30-consecutive day limit and is included in the written individual habilitation plan. These exceptions are as follows:

i. Special Olympics;

ii. roadrunner-sponsored events;

iii. Louisiana planned conferences;

iv. trial discharge leave;

v. official state holidays.

NOTE: Elopements and unauthorized absences under the individual habilitation plan count against allowable leave days. However, Title XIX eligibility is not affected if the absence does not exceed 30 consecutive days and if the ICF/MR has not discharged the client.

3. the period of absence shall be determined by counting the first day of absence as the day on which the first 24-hour period of absence expires;

4. a period of 24 continuous hours or more shall be considered an absence. Likewise, a temporary leave of absence for hospitalization or a home visit is broken only if the client returns to the ICF/MR for 24 hours or longer;

5. upon admission, a client must remain in the ICF/MR at least 24 continuous hours in order for the ICF/MR to submit a payment claim for a day of service or reserve a bed;

EXAMPLE: A client admitted to an ICF/MR in the morning and transferred to the hospital that afternoon would not be eligible for any vendor payment for ICF/MR services.

6. if a client transfers from one facility to another, the unused leave days for the fiscal year also transfer. No additional leave days are allocated as a result of a transfer;

7. the ICF/MR shall promptly notify DHH of absences beyond the applicable 30- or seven-day limitations. Payment to the ICF/MR shall be terminated from the thirty-first or eighth day, depending upon the leave of absence. Payment will commence after the individual has been determined eligible for Title XIX benefits and has remained in the ICF/MR for 30 consecutive days;

8. the limit on Title XIX payment for leave days does not mean that further leave days are prohibited when provided for in the individual habilitation plan. After the Title XIX payment limit is met, further leave days may be arranged between the ICF/MR and the client, family or responsible party. Such arrangements may include the following options:

a. the ICF/MR may charge the client, family or responsible party an amount not to exceed the Title XIX daily rate;

b. the ICF/MR may charge the client, family or responsible party a portion of the Title XIX daily rate;

c. the ICF/MR may absorb the cost into its operation costs.

B. Temporary Absence of the Client Due to Evacuations. When local conditions require evacuation of ICF/MR residents, the following payment procedures apply.

1. When clients are evacuated for less than 24 hours, the monthly vendor payment is not interrupted.

2. When staff is sent with clients to the evacuation site, the monthly vendor payment is not interrupted.

3. When clients are evacuated to a family's or friend's home at the ICF/MR's request, the ICF/MR shall not submit a claim for a day of service or leave day, and the client's liability shall not be collected.

4. When clients go home at the family's request or on their own initiative, a leave day shall be charged.

5. When clients are admitted to the hospital for the purpose of evacuation of the ICF/MR, Medicaid payment shall not be made for hospital charges.

C. Payment Policy in regard to Date of Admission, Discharge, or Death

1. Medicaid (Title XIX) payments shall be made effective as of the admission date to the ICF/MR. If the

client is medically certified as of that date and if either of the following conditions is met:

a. the client is eligible for Medicaid benefits in the ICF/MR (excluding the medically needy); or

b. the client was in a continuous institutional living arrangement (nursing home, hospital, ICF/MR, or a combination of these institutional living arrangements) for 30 consecutive days; the client must also be determined financially eligible for Medical Assistance.

2. The continuous stay requirement is:

a. considered met if the client dies during the first 30 consecutive days;

b. not interrupted by the client's absence from the ICF/MR when the absence is for hospitalization or leave of absence which is part of the written individual habilitation plan.

3. The client's applicable income is applied toward the ICF/MR fee effective with the date Medicaid payment is to begin.

4. Medicaid payment is not made for the date of discharge; however, neither the client, the family, nor responsible party is to be billed for the date of discharge.

5. Medicaid payment is made for the day of client's death.

NOTE: The ICF/MR shall promptly notify DHH/BHSF of admissions, death, and/or all discharges.

D. Advance Deposits

1. An ICF/MR shall neither require nor accept an advance deposit from an individual whose Medicaid (Title XIX) eligibility has been established.

EXCEPTION: An ICF/MR may require an advance deposit for the current month only on that part of the total payment which is the client's liability.

2. If advance deposits or payments are required from the client, family, or responsible party upon admission when Medicaid (Title XIX) eligibility has not been established, such a deposit shall be refunded or credited to the person upon receipt of vendor payment.

E. Retroactive Payment. When individuals enter an ICF/MR before their Medicaid (Title XIX) eligibility has been established payment for ICF/MR services is made retroactive to the first day of eligibility after admission.

F. Timely Filing for Reimbursements. Vendor payments cannot be made if more than 12 months have elapsed between the month of initial services and submittal of a claim for these services. Exceptions for payments of claims over 12 months old can be made with authorization from DHH/BHSF only.

G. Refunds to Clients

1. When the ICF/MR receives vendor payments, it shall refund any fees for services collected from clients, family or responsible party by the end of the month in which vendor payment is received.

2. Advance payments for a client's liability (applicable income) shall be refunded promptly if he/she leaves the ICF/MR.

3. The ICF/MR shall adhere to the following procedures for refunds.

a. The proportionate amount for the remaining days of the month shall be refunded to the client, family, or the responsible party no later than 30 days following the date of discharge. If the client has not yet been certified, the procedures spelled out in Paragraph 1 above shall apply.

b. No penalty shall be charged to the client, family, or responsible party even if the circumstances surrounding the discharge occurred as follows:

i. without prior notice; or

ii. within the initial month; or

iii. within some other "minimum stay" period established by the ICF/MR.

c. Proof of refund of the unused portion of the applicable income shall be furnished to BHSF upon request.

H. ICF/MR Refunds to the Department

1. Nonparticipating ICF/MR. Vendor payments made for services performed while an ICF/MR is in a nonparticipating status with the Medicaid Program shall be refunded to the Office of Management and Financing, Post Office Box 629, Baton Rouge, LA 70821-0629. The refund shall be made payable to the "Department of Health and Hospitals-Medicaid Program."

2. Participating ICF/MR. A currently participating Title XIX, ICF/MR shall correct billing or payment errors by use of appropriate adjustment void or Patient Liability (PLI) adjustment forms.

I. Sitters. An ICF/MR will neither expect nor require a client to have a sitter. However, the ICF/MR shall permit clients, families, or responsible parties directly to employ and pay sitters when indicated, subject to the following limitations.

1. The use of sitters will be entirely at the client's, family's, or responsible party's discretion. However, the ICF/MR shall have the right to approve the selection of a sitter. If the ICF/MR disapproves the selection of the sitter, the ICF/MR will provide written notification to the client, family, and/or responsible party, and to the Department of Health and Hospitals stating the reasons for disapproval.

2. Payment to sitters is the direct responsibility of the client, family or responsible party, unless:

a. the hospital's policy requires a sitter;

b. the attending physician requires a sitter; or

c. the individual habilitation plan (IHP) requires a sitter.

NOTE: Psychiatric Hospitals are excluded from this requirement.

3. Payment to sitters is the direct responsibility of the ICF/MR facility when:

a. the hospital's policy requires a sitter and the client is on hospital leave days;

b. the attending physician requires a sitter;

c. the IHP requires a sitter.

4. A sitter will be expected to abide by the ICF/MR's rules, including health standards and professional ethics.

5. The presence of a sitter does not absolve the ICF/MR of its full responsibility for the client's care.

6. The ICF/MR is not responsible for providing a sitter if one is required while the resident is on home leave.

J. Tips. The ICF/MR shall not permit tips for services rendered by its employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and

Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:682 (April 1999), LR 31:1082 (May 2005), repromulgated LR 31:2257 (September 2005).

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

0509#065

RULE

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

Third Party Liability Newborn Notification Requirements

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions under the Third Party Liability Program governing newborn notification requirements for hospitals.

A. Definitions

Effective Date of Birth the date of live birth of a newborn child.

Health Insurance Issuer an insurance company, including a health maintenance organization as defined and licensed to engage in the business of insurance under Part XII of Chapter 2 of Title 22, unless preempted as a qualified employee benefit plan under the Employee Retirement Income Security Act of 1974.

Third Party Liability (TPL) Notification of Newborn Child(ren) Form the written form developed by the Department of Health and Hospitals that must be completed by the hospital to report the birth and health insurance status of a newborn child.

Qualifying Newborn Child a newborn child who meets the eligibility provisions for the Medicaid Program.

B. Notification Requirements

1. A hospital shall complete the Third Party Liability (TPL) Notification of Newborn Child(ren) form to report the birth and health insurance status of a qualifying newborn child either delivered in their facility, delivered under their care, or transferred to their facility after birth. The notification shall only be completed when the hospital reasonably believes that the following entities would consider the child to be a qualified newborn and insurance coverage is available to said child(ren):

a. the health insurance issuer that has issued a policy of health insurance under which the newborn child may be entitled to coverage; and

b. the Department of Health and Hospitals.

2. The TPL Notification of Newborn Child(ren) form shall be completed by the hospital and submitted to any and all applicable health insurance issuers within seven days of the birth of a newborn child. Delivery of the notification form may be established via the U.S. Mail, fax, or e-mail.

3. The TPL Notification of Newborn Child(ren) form shall be sent to the Department of Health and Hospitals, Bureau of Health Services Financing, Third Party Liability/Medicaid Recovery within seven days of the birth of the child.

4. This notification shall not be altered, in any respect, by the hospital and shall be in addition to any other notification, process or procedure followed by the hospital. The notification shall not be done in lieu of any other required notice, process or procedure established in any other rule, manual, or policy.

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

0509#063

RULE

Department of Insurance
Office of the Commissioner

Regulation 86 Dependent Coverage of Newborn Children in the Group and Individual Market
(LAC 37:XIII.Chapter 111)

Under the authority of the Louisiana Insurance Code, R.S. 22:1, et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice that it adopts Regulation 86 relating to procedures to provide health insurance coverage in the group and individual market to newborn children who meet the eligibility requirements as set forth in State Implementation Plan of Title XIX of the Social Security Act, and to specify the information that is to be provided by the health insurance issuer to the Secretary of the Department of Health and Hospitals as well as any health care provider or health care facility within certain prescribed time frames in order to allow these persons the option of making the payment of the incremental increase in the premium applicable to the health insurance for the newborn child, and to provide for sanctions.

Title 37
INSURANCE
Part XIII. Regulations
Chapter 111. Regulation 86—Dependent Coverage of Newborn Children in the Group and Individual Market

§11101. Authority

A. This regulation is issued pursuant to the authority vested in the commissioner under the provisions of R.S. 49:953 of the Administrative Procedure Act, R.S. 22:3 and 22:250.2(E)(2)(b) and (c), and R.S. 22:250.4.F, and 22:250.11.E and 22:250.15.A, regarding the coverage of a newborn child as a dependent in the group and individual health insurance market and to provide for related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2259 (September 2005).

§11103. Purpose

A. The purpose of this regulation is to establish reasonable requirements and standards for the processing of such coverage by health insurance issuers that assures compliance with state requirements under Title 22 of the Louisiana Revised Statutes of 1950, as amended. More specifically, this regulation is necessary to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and R.S. 22:250.4.F, and 22:250.11.E and 22:250.15.A of Part VI-C of Chapter 1 of Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2260 (September 2005).

§11105. Applicability and Scope

A. Except as otherwise specifically provided, the requirements of this regulation shall apply to health insurance issuers, including health maintenance organizations, as required pursuant to R.S. 22:2001 et seq., of the Louisiana Revised Statutes of 1950, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2260 (September 2005).

§11107. Definitions

A. As used in this regulation, these terms shall have the following meaning.

Cancellation for Nonpayment of Premium the cancellation of coverage for a newborn child who was added as a dependent due to the nonpayment of the applicable premium adjustment for the additional coverage for the newborn child within the time frames established by law or in this regulation.

Effective Date of Birth the date of the moment of live birth of a newborn child.

Eligibility Provisions a newborn child who meets the requirements set forth in the State Plan Medical Assistance under Title XIX of the Social Security Act.

Health Care Facility a facility or institution providing health care services including, but not limited to, a hospital (specifically including a neonatal special care unit) or other licensed inpatient center, ambulatory surgical or treatment center, diagnostic, laboratory, or imaging center, or rehabilitation or other therapeutic health setting.

Health Care Provider a physician or other health care practitioner licensed, certified or registered to perform specified health care services consistent with state law.

Health Insurance Issuer an insurance company, including a health maintenance organization as defined and licensed to engage in the business of insurance under Part XII of Chapter 2 of Title 22 of the Louisiana Revised Statutes, unless preempted as a qualified employee benefit plan under the Employee Retirement Income Security Act of 1974.

Newborn Child an infant from the time of birth through and until such time as the infant is discharged from a health care facility to his or her home.

Non-Qualifying Newborn Child a newborn child who does not meet the eligibility requirements of the State Plan Medical Assistance under Title XIX of the Social Security Act.

Notice of Cancellation the written notice sent from the health insurance issuer to the Secretary of the Department of Health and Hospitals by certified mail, return receipt requested, with regard to the cancellation of coverage for a newborn child. This *notice of cancellation* may, as a courtesy, also be sent via electronic means to the Secretary of the Department of Health and Hospitals; however, such electronic notice shall not satisfy the notice requirement set forth in the enabling statute that requires the Notice of Cancellation be sent by certified mail, return receipt requested, to the Secretary of the Department of Health and Hospitals.

Qualifying Newborn Child a newborn child who meets the eligibility provisions of the State Plan Medical Assistance under Title XIX of the Social Security Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2260 (September 2005).

§11109. Enrollment Notification Procedures for a Qualifying Newborn Child

A. Upon notification of the birth of a newborn child who is potentially eligible under Title XIX of the Social Security Act, the health insurance issuer shall be required to:

1. verify that dependant coverage is available for the newborn child or make a determination that no coverage is available for the newborn child;

2. make a determination of the benefit limits with regard to the newborn child;

3. make a determination of any additional premium, if applicable, that may be due in order to provide dependent coverage for the newborn child; and

4. designate a point of contact (which may be a specific position), with telephone number and physical address, to represent the health insurance issuer to facilitate all matters relative to the newborn child.

B. Upon notification of the birth of a newborn child who is potentially eligible under Title XIX of the Social Security Act, the health insurance issuer shall be required to notify the following persons:

1. with regard to an individual policy, the policyholder;

2. with regard to a group policy, both the employer and the employee;

3. with regard to either an individual policy or a group policy, the health care facility that rendered any medical service to the newborn child from the moment of birth until such time as the infant is discharged from said health care facility to his or her home.

C. The notification that the health insurance issuer is required to send to the persons referred to in Subsection B above shall include the following information:

1. verification as to whether the health plan provides coverage under which the newborn child could be enrolled as a dependent or, if such coverage is not available under the health care plan, an explanation of why such coverage is not available;

2. the additional amount of premium due, if any, in order to provide dependent coverage for the newborn child;

3. designate a point of contact (which may be a specific position), with telephone number and physical address, to represent the health insurance issuer to facilitate all matters relative to the newborn child; and

4. statement to the policyholder under an individual policy or the employee and employer under a group plan that additional information is needed by the health insurance issuer. A health insurance issuer may request that the signature of the policyholder of an individual policy or employee and employer under a group plan be on the enrollment form. However, the failure of the policyholder or employee or employer, as applicable, to place a signature on the enrollment form shall not be a requirement for the enrollment of the newborn child, as the newborn child is enrolled as a matter of law.

D. The health insurance issuer shall be required to provide 90 days written notice to the Secretary of the Department of Health and Hospitals prior to the cancellation of health coverage for a potential qualifying newborn child. This notice shall provide the following documents and/or information:

1. the group identification/policy number or the individual identification/policy number, as applicable, including, but not limited to, the major medical identification number and the prescription drug identification number;

2. summary of benefits, including, but not limited to, an itemization of all covered benefits and applicable co-payments and deductibles;

3. amount of additional premium due in order to provide dependent coverage for the newborn child, including, but not limited to, the total premium (month or portion of a month) due to effectuate coverage for the newborn child from the date of birth;

4. the name(s) of the member subscriber of the newborn child, including, but not limited to, the name(s) of any and all other dependent(s) and the effective date of coverage for each person(s) named as a dependent;

5. designate a point of contact (which may be a specific position), with telephone number and physical address, to represent the health insurance issuer to facilitate all matters relative to the newborn child.

E. Additionally, no later than three days after the mailing of the written notice to the Secretary of the Department of Health and Hospitals referred to in Subsection D above, the health insurance issuer shall provide the same documents and/or information to any and all health care facilities and any and all health care providers who, prior to or on the date of the notice of cancellation, have either:

1. submitted a claim to the health insurance issuer for health care services rendered to the newborn child; or

2. provided notice to the health insurance issuer that it is rendering or has rendered health care services to the newborn child.

F. The Secretary of the Department of Health and Hospitals shall have 90 days, commencing the day after the secretary receives the written notice, via certified mail, return receipt requested, from the health insurance issuer as provided in Subsection D above, to pay the applicable additional premium attributable to the newborn child to retain the newborn child as a covered dependent under the policy of health insurance.

G. If that portion of the applicable additional premium attributable to the newborn child being retained as a covered dependent under the policy of health insurance remains unpaid after the expiration of the 90 day written notice time period referred to in Subsection E above to the Secretary of Department of Health and Hospitals, the health insurance issuer may thereafter cancel the dependent coverage for the newborn child effective as of the date of birth of the newborn child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2260 (September 2005).

§11111. Procedures for a Non-Qualifying Newborn Child

A. The health insurance issuer shall be required to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 with regard to the enrollment procedures relative to dependent coverage for a non-qualifying newborn child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2261 (September 2005).

§11113. Timely Payment of Claims

A. In cases where the time for the payment of a claim may be effected by the requirements of R.S. 22:250.4 et seq., such requirements shall be considered "just and reasonable grounds" for a health insurance issuer to delay in the payment of a claim pursuant to R.S. 22:250.31 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2261 (September 2005).

§11115. Sanctions

A. A health insurance issuer that does not comply with any of the time limits for action or notice set forth in this regulation, or who does not provide all of the information required in this regulation, shall be subject to the sanctions set forth in R.S. 22:1457.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and

22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2261 (September 2005).

§11117. Severability

A. If any section or provision of this regulation or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other sections or provisions or the application of this regulation to any persons or circumstances that can be given effect without the invalid section or provision or application, and for these purposes the sections and provisions of this regulation and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2262 (September 2005).

§11119. Effective Date

A. This regulation shall be effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 to implement and enforce the provisions of R.S. 22:250.2.E.(2)(b) and (c), and 22:250.4.F, and 22:250.11.E, and 22:250.15.A of Part VI-C of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, as amended.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 31:2262 (September 2005).

J. Robert Wooley
Commissioner

0509#017

RULE

Department of Natural Resources
Office of Conservation

Statewide Order 29-B Hours for Receiving Waste
(LAC 43:XIX.537)

The Louisiana Office of Conservation has amended LAC 43:XIX.Chapter 5 (Statewide Order No. 29-B) in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq., and pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Sections 30:4 et seq. The amendment modifies the specific provision at LAC 43:XIX.537.A which establishes the hours whereby commercial exploration and production waste disposal facility and transfer stations may receive waste.

The amendment to the above existing Rule establishes uniformly consistent hours by which commercial exploration and production waste disposal facilities and transfer stations may receive waste. Operators of such facilities will be allowed to receive waste between the fixed hours of 6 a.m. and 9 p.m., Central Time Zone.

Title 43
NATURAL RESOURCES
Part XIX. Office of ConservationCGeneral Operations
Subpart 1. Statewide Order No. 29-B
Chapter 5. Off-Site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells

§537. Hours of Receiving

A. Commercial facilities and transfer stations shall be adequately manned during hours of receiving and shall receive E&P Waste by truck only between the hours of 6 a.m. and 9 p.m., Central Time, except as provided in §537.B. below.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1910 (November 2001), amended LR 31:2262 (September 2005).

James H. Welsh
Commissioner

0509#006

RULE

Department of Social Services
Office of Family Support

Child Care Assistance Program (LAC 67:III.Chapter 51)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 12, Chapter 51, §§5102, 5103, 5104, 5107, 5109, and 5111. Section 5113, Child Care Provider Disqualifications, in the Notice of Intent published June 20, 2005, has been omitted from the final Rule as announced at the public hearing of July 28, 2005, The agency has determined that further study is necessary before this proposal is adopted.

Title 67
SOCIAL SERVICES
Part III. Family Support
Subpart 12. Child Care Assistance
Chapter 51. Child Care Assistance
Subchapter A. Administration, Conditions of Eligibility, and Funding

§5102. Definitions

***

Household a group of individuals who live together, consisting of the head of household, that person's legal spouse or non-legal spouse, the disabled adult parent who is unable to care for himself/herself and his/her child(ren) who are in need of care, and all children under the age of 18 who are dependent on the head of household and/or spouse, including the minor unmarried parent (MUP) who is not legally emancipated and the MUP's children.

Intentional Program Violation (IPV) any act by a CCAP client or provider that consists of intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding relevant facts.

***

Special Needs Child Care child care for a child through age 17 who because of a mental, physical, or emotional disability, requires specialized facilities, lower staff ratio, and/or specially trained staff to meet his or her developmental and physical needs. Incentive payments up to 25 percent higher than the regular rates can be allowed for a special needs child if the provider is actually providing the specialized care.

Training or Employment Mandatory Participant (TEMP) a household member who is required to be employed or attending a job training or educational program, including the head of household, the head of household's legal spouse or non-legal spouse, the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) live with the MUP and the MUP's disabled parent/guardian who is unable to care for the MUP's child(ren) while the MUP goes to school/work.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), amended LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005).

§5103. Conditions of Eligibility

A. - A.1. ...

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veterans' Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. ...

b. attending a job training or educational program for a minimum average of, effective April 1, 2003, 25 hours per week (attendance at a job training or educational program must be verified, including the expected date of completion); or

c. - d. ...

5. Household income does not exceed 75 percent of the State Median Income for a household of the same size. Income is defined as:

a. the gross earnings of the head of household, that person's legal spouse, or non-legal spouse and any minor unmarried parent who is not legally emancipated and whose children are in need of Child Care Assistance; and

b. recurring unearned income of the following types for all household members:

i. Social Security Administration benefits;

ii. Supplemental Security Income;

iii. Veterans' Administration benefits;

iv. retirement benefits;

v. disability benefits;

vi. child support/alimony;

vii. unemployment compensation benefits;

viii. adoption subsidy payments, and workers' compensation benefits.

6. - 7. ...

8. Effective November 1, 2005, the household must be current on payment of co-payments to any current or previous provider(s). Verification will be required that co-payments are not owed when:

a. a change in provider is reported;

b. at application for Child Care Assistance, the most recent case rejection or closure was due to owing co-payments or not making necessary co-payments;

c. a child care provider reports that the client owes co-payments or is not making necessary co-payments.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005).

§5104. Reporting Requirements
Effective February 1, 2004

A. ...

B. A Low Income Child Care household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual reporting requirements in accordance with §2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. ...

2. an interruption of at least three weeks or a termination of any TEMP's employment or training; or

3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1487 (July 2004), amended LR:31:2263 (September 2005).

Subchapter B. Child Care Providers

§5107. Child Care Providers

A. The head of household, or parent/caretaker relative in the case of a STEP participant, shall be free to select a child care provider of his/her choice including center-based child care (licensed Class A centers and licensed Class A Head Start centers which provide before-and-after school care and/or summer programs), a registered Family Child Day Care Home (FCDCH) provider, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, and/or before and after school care programs.

B. A licensed Class A center or licensed Class A Head Start center must be active in the Child Care Assistance Program (CCAP) Provider Directory and complete and sign a Class A provider agreement before payments can be made to that facility.

C. An FCDCH provider must be registered and active in the CCAP Provider Directory before payments can be made to that provider.

1. To be eligible for participation, an FCDCH provider must complete and sign an FCDCH provider agreement, complete a request for registration and Form W-9, pay appropriate fees, furnish verification of Social Security

number and residential address, provide proof that he/she is at least 18 years of age, and meet all registration requirements, including:

a. certification that they, nor any person employed in their home or on their home property, have never been the subject of a validated complaint of child abuse or neglect, or have never been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1.(C);

b. submission of verification of current certification in infant/child or infant/child/adult Cardiopulmonary Resuscitation (CPR) and first aid;

c. submission to criminal background check(s) on all adults living at the provider's residence or employed by the provider and working in the provider's home or on the provider's home property, including the provider; each of which must be received from State Police indicating no enumerated conviction;

d. effective March 1, 2002, submission of verification of 12 clock hours of training in job-related subject areas approved by the Department of Social Services annually;

e. retainment of a statement of good health signed by a physician or his designee which must have been obtained within the past three years and be obtained every three years thereafter;

f. submission of a passed inspection by the Office of State Fire Marshal;

g. usage of only safe children's products and removal from the premises of any products which are declared unsafe and recalled as required by R.S.46:2701-2711. (CCAP FCDCH providers will receive periodic listings of unsafe and recalled children's products from the Consumer Protection Section of the Attorney General, Public Protection Division);

2. All registration functions for FCDCH providers, as provided in R.S. 46:1441 et seq. and as promulgated in the *Louisiana Register*, September 20, 1991, previously exercised by the Bureau of Licensing, shall be carried out by the Office of Family Support.

D. An In-Home child care provider must be certified and active in the CCAP Provider Directory before payments can be made to that provider.

1. To be eligible for participation, an In-Home child care provider must complete and sign an In-Home provider agreement and Form W-9, pay appropriate fees, furnish verification of Social Security number and residential address, provide proof that he/she is at least 18 years of age, and meet all certification requirements, including:

a. certification that he/she has never been the subject of a validated complaint of child abuse or neglect or has never been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1.(C);

b. submission of verification of current certification in infant/child or infant/child/adult Cardiopulmonary Resuscitation (CPR) and first aid;

c. submission to a criminal background check which must be received from State Police indicating no enumerated conviction;

d. completion of the Health and Safety Standards Form.

E. A public or non-public school program must be certified, must complete and sign a school program provider agreement and Form W-9, and must be regulated by the Board of Elementary and Secondary Education (BESE) if a public school or Brumfield vs. Dodd approved if a non-public school before payments can be made to that provider.

F. Under no circumstance can the following be considered an eligible CCAP provider:

1. a person living at the same residence as the child;

2. the child's parent or guardian, or parent/caretaker relative in the case of a STEP participant, whether or not that individual lives with the child;

3. an FCDCH provider, (if the child's non-custodial parent is residing in the FCDCH and is not working during the hours that care is needed);

4. a Class B child care center;

5. an individual who has been the subject of a validated complaint of child abuse or neglect, or has been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1(C), unless approved in writing by a district judge of the parish and the local district attorney;

6. an FCDCH provider who resides with or employs a person in their home or on their home property who has been the subject of a validated complaint of child abuse or neglect, or has been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1.C. unless approved in writing by a district judge of the parish and the local district attorney;

7. a person/center providing care outside of the state of Louisiana.

G.1. A provider shall be denied or terminated as an eligible CCAP provider if:

a. the agency determines that a condition exists which threatens the physical or emotional health or safety of any child in care;

b. an FCDCH provider fails to pass the second inspection by the Fire Marshal;

c. a provider fails to timely return all requested forms, fees, etc.;

d. a Class A center's license is revoked or not renewed;

e. a school child care provider no longer meets the BESE regulations;

f. a school child care provider is no longer Brumfield vs. Dodd approved; or

g. a provider violates the terms of the provider agreement.

2. A provider agreement may be terminated by either party for any reason upon giving 30 days advance notice to the other party.

H.1. Quality incentive bonuses are available to:

a. eligible CCAP Class A providers who achieve and maintain National Association for the Education of Young Children (NAEYC) accreditation. The bonus will be paid once each calendar quarter, and will be equal to 20 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund;

b. eligible CCAP FCDCH providers who participate in the Department of Education (DOE) Child and Adult Care

Food Program. The bonus will be paid once each calendar quarter, and will be equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund;

c. effective May 1, 2004, eligible CCAP providers who provide special care for children with special needs. This special needs care includes but is not limited to specialized facilities/equipment, lower staff ratio, and specially trained staff. The amount of these Special Needs Care Incentive payments will be in accordance with §§5109.B.1.b. and 5109.B.2.b.

2. These bonus amounts may be adjusted at the discretion of the assistant secretary, based upon the availability of funds.

I. CCAP offers Repair and Improvement Grants to either licensed or registered providers, or to those who have applied to become licensed or registered, to assist with the cost of repairs and improvements necessary to comply with DSS licensing or registration requirements and/or to improve the quality of child care services.

1. Effective September 1, 2002, the program will pay for 75 percent of the cost of such a repair or improvement, up to the following maximums.

a. For Class A Centers the maximum grant amount will be equal to $100 times the number of children listed in the licensed capacity, or $10,000, whichever is less.

b. For FCDCH providers the maximum grant amount will be $600.

c. These amounts may be adjusted at the discretion of the Assistant Secretary, based upon the availability of funds.

2. A provider can receive no more than one such grant for any state fiscal year. To apply, the provider must submit an application form indicating that the repair or improvement is needed to meet DSS licensing or registration requirements, or to improve the quality of child care services. Two written estimates of the cost of the repair or improvement must be provided and the provider must certify that the funds will be used for the requested purpose. If the provider has already paid for the repair or improvement, verification of the cost in the form of an invoice or cash register receipt must be submitted. Reimbursement can be made only for eligible expenses incurred no earlier than six months prior to the application. If a provider furnishes estimates to receive a grant, the grant must be spent for the requested purpose within three months of the date the grant is issued.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005).

§5109. Payment

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

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

Number in Household	2	3	4	5	DSS%
Monthly Household Income	0-1069	0-1341	0-1613	0-1884	75%
	1070-1608	1342-1997	1614-2386	1885-2774	55%
	1609-2147	1998-2653	2387-3158	2775-3664	35%
	Above 2147	Above 2653	Above 3158	Above 3664	0%
Number in Household	**6**	**7**	**8**	**9**	**DSS%**
Monthly Household Income	0-2156	0-2428	0-2699	0-2971	75%
	2157-3163	2429-3346	2700-3529	2972-3712	55%
	3164-4169	3347-4264	3530-4358	3713-4453	35%
	Above 4169	Above 4264	Above 4358	Above 4453	0%
Number in Household	**10**	**11**	**12**	**13**	**DSS%**
Monthly Household Income	0-3243	0-3514	0-3786	0-4058	75%
	3244-3896	3515-4079	3787-4262	4059-4445	55%
	3897-4548	4080-4643	4263-4737	4446-4832	35%
	Above 4548	Above 4643	Above 4737	Above 4832	0%
Number in Household	**14**	**15**	**16**	**17**	**DSS%**
Monthly Household Income	0-4329	0-4601	0-4873	0-5144	75%
	4330-4628	4602-4811	4874-4995	5145-5178	55%
	4629-4927	4812-5021	4996-5116	5179-5211	35%
	Above 4927	Above 5021	Above 5116	Above 5211	0%
Number in Household	**18**				
Monthly Household Income	0-5416				75%

NOTE: Effective October 1, 2005, the household's gross monthly income has been adjusted as reflected in the above tables.

B.1. - 2.b. ...

3. The number of hours authorized for payment is based on the lesser of the following:

a. ...

b. the number of hours the head of household, the head of household's spouse or non-legal spouse, or the minor unmarried parent is working and/or attending a job training or educational program each week, plus one hour per day for travel to and from such activity; or

B.3.c. - D. ...

E. Payment will not be made for absences of more than five days by a child in any calendar month or for an extended closure by a provider of more than five consecutive days in any calendar month. A day of closure, on a normal operating day for the provider, is counted as an absent day for the child(ren) in the provider's care.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), LR 31:2265 (September 2005).

§5111. Ineligible Payments

A. - B.2. ...

C. If IPV is established, Fraud and Recovery will send a notice to the person to be disqualified and a copy of the notice to the parish office. The parish office will take action to disqualify for the appropriate situations:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000), amended LR 30:496 (March 2004), LR:31:2266 (September 2005).

Ann S. Williamson
Secretary

0509#045

RULE

Department of Social Services
Office of Family Support

Support Enforcement Services Program Child Support Payment Distribution (LAC 67:III.2514)

The Department of Social Services, Office of Family Support, Support Enforcement Services has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the Support Enforcement Program.

Title 67
SOCIAL SERVICES
Part III. Family Support
Subpart 4. Support Enforcement Services
Chapter 25. Support Enforcement
Subchapter D. Collection and Distribution of Support Payments
§2514. Distribution of Child Support Collections

A. Effective October 2, 1998, the agency will distribute child support collections in the following manner:

1. - 5.b. ...

6. Effective April 25, 2005, the state may delay distribution of Federal Offsets for child support arrears until the state has been notified by the U.S. Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the offset. The delay may not exceed six months.

B. ...

C. Effective April 25, 2005, when child support is collected in the form of a foreign currency, the state shall send the child support payment to the custodial parent within two business days of receipt of the converted U.S. dollar payment.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, OCSE-AT-98-24, 42USC,664(a)(3)(B), 42USC,654b(c).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:304 (March 1997, amended LR 24:703 (April 1998), LR 25:320 (February 1999), LR 31:2266 (September 2005).

Ann S. Williamson
Secretary

0509#034

RULE

Office of Transportation and Development
Office of Highways/Engineering

"RV Friendly" Designations to Specific Services (LOGO) Signs (LAC 70.III:115)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development hereby amends Subchapter A of Chapter 1 of Part III of Title 70 entitled "Regulations for Control of Outdoor Advertising," in accordance with R.S. 48:274.1(B)(2).

Title 70
TRANSPORTATION
Part III. Outdoor Advertising
Chapter 1. Outdoor Advertising
Subchapter A. Outdoor Advertising Signs
§115. "RV Friendly" Program

A. Purpose. The purpose of this rule is to establish policies for the installation of "RV Friendly" symbols on qualifying Specific Services (LOGO) Signs.

B. Definitions

"RV Friendly" those businesses that can accommodate large recreational vehicles by meeting specific facility and access criteria.

C. Criteria

1. Roadway and Parking Surfaces

a. Roadways and parking lots must be all-weather hard surface. Road surface types can include concrete, asphalt, and aggregate such as gravel, limestone, and rap material.

b. Roadway shall be free of ruts and potholes.

c. Lane widths shall be a minimum of 11 feet.

d. A minimum turning radius of 50 feet shall be used on all connections and turns.

2. Parking Spaces

a. Facilities must have two or more spaces that are 12 feet wide and 65 feet long.

b. A turning radius of 50 feet is required at both ends to enter and exit the spaces.

c. All designated parking spaces must be clearly marked with the "RV Friendly" logo.

d. Gas stations without restaurants are exempt from this requirement.

3. Vertical Clearance

a. Facility with canopies or roof overhangs must have 15-foot minimum clearance.

b. Tree limbs and power lines must have a 15-foot minimum clearance.

4. Fueling Stations

a. Facilities selling diesel fuel to RVs must have at least one pump with non-commercial nozzle.

b. Fueling stations must have a turning radius of 50 feet at both ends to enter and exit the fuel islands.

c. All designated fuel pumps must be clearly marked with the "RV Friendly" logo.

5. Campgrounds

a. Campgrounds must have two or more camping spaces that are 18 feet wide and 50 feet long.

D. "RV Friendly" Symbol

1. Description:

a. The "RV Friendly" marker shall be a bright yellow circle with a crescent smile under the letters "RV." The yellow background sheeting will be AASHTO Type III Sign Sheeting (High Intensity). The letters and crescent smile shall be approved non-reflective black.

b. If necessary for mounting the sheeting may be attached to an aluminum circle.

2. Dimensions

a. For mainline installations, the symbol shall have a 12-inch diameter yellow circle with 5 1/2-inch black block letters.

b. For ramp and trailblazer installations the symbol shall be a 6-inch diameter yellow circle with 2 3/4-inch black block letters and a crescent smile.

3. Attachment and Placement

a. The symbol shall be located within the business logo panel. On new signs it shall be designed and fabricated as part of the logo panel.

b. On existing logo panels, the symbol sheeting may be directly applied to the sheeting of the logo panel or it may be attached to an aluminum circle that can then be attached to the logo panel with approved fasteners.

c. On existing logo panels, the placement location of the symbol will be determined by the department. If placement of the symbol is not possible because of a lack of space between existing legends, the business will not be allowed to participate in the program until new logo panels that are designed and fabricated with the symbol are supplied to the department.

E. Administration

1. Application

a. Facilities that already participate in the LOGO program will submit an "RV Friendly" application form to the department.

b. Facilities that do not belong to the LOGO program will submit a LOGO application as well as an "RV Friendly" application.

c. The facility may be inspected by the department to assure that the facility meets the "RV Friendly" qualifying criteria.

d. Facilities that have qualified for "RV Friendly" signs, but at a later date no longer meet the criteria listed in Subsection C above will be removed from the "RV Friendly" program and will be required to cover the "RV Friendly" symbols with their business signs.

2. Fees and Special Requirements

a. For a business to participate in the "RV Friendly" program, all of its logo panels must be fabricated or modified to include the "RV Friendly" symbol.

b. No additional fees will be charged to new facilities that include the "RV Friendly" symbol in their business logo panels.

c. Facilities that already participate in the Logo program will be charged a one-time processing, material, and installation fee of $25 for each "RV Friendly" symbol.

d. Facilities that have qualified for "RV Friendly" signs, but at a later date no longer meet the criteria listed in Subsection C above will be removed from the "RV Friendly" program, must have their business signs cover the "RV Friendly" symbols and shall be charged $25 for each symbol that must be covered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.1(B)(2).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 31:2266 (September 2005).

J. Michael Bridges, P.E.
Undersecretary

0509#031

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Alligator Regulations (LAC 76:V.701)

The Wildlife and Fisheries Commission does hereby eliminate the suspension of $1.00 of the $4.00 alligator hide tag fee.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 7. Alligators
§701. Alligator Regulations

A. The Department of Wildlife and Fisheries does hereby establish regulations governing the harvest of wild populations of alligators and alligator eggs, raising and propagation of farmed alligators, tanning of skins and regulations governing the selling of hides, alligator parts and farm raised alligators. The administrative responsibility for these alligator programs shall rest with the Department Secretary; the Assistant Secretary, Office of Wildlife; and the Fur and Refuge Division.

1. - 3. …

4. Licenses, Permits and Fees

a. The licenses and fees required for activities authorized by these regulations are as prescribed under

provisions of Title 56, or as prescribed in these regulations, and are:

i. - x. …

xi. $4 for each alligator hide tag;

4.a.xii. - 17.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:259, R.S. 56:262, R.S. 56:263 and R.S. 56:280.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:1070 (December 1990), amended LR 17:892 (September 1991), LR 19:215 (February 1993), LR 20:321 (March 1994), LR 26:1492 (July 2000), LR 28:1996 (September 2002), LR 30:2338 (October 2004), LR 30:2878 (December 2004), LR 31:2267 (September 2005).

Dwight Landreneau
Secretary

0509#027

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Bird Dog Training Areas (LAC 76:V.321)

The Department of Wildlife and Fisheries, Wildlife and Fisheries Commission does hereby create and establish rules for bird dog training areas on wildlife management areas.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 3. Wild Birds
§321. Bird Dog Training Areas

A. Purpose. Bird dog training areas (BDTA) are established to afford users of Wildlife Management Areas (WMA) an opportunity to train pointing dogs and flushing retrievers or spaniels with live released birds. The BDTA is not intended to serve as a hunting preserve. The following regulations are adopted to ensure that users of the BDTA utilize the area as intended, and to minimize the potential for negative impacts on wildlife.

B. Establishment and Posting. BDTAs may be established on any WMA. Portions of the WMA without significant wild quail populations, and where wildlife will not be negatively impacted, are suitable for establishment of BDTAs. BDTAs must be marked with signs and/or paint clearly indicating the boundaries.

C. Permits and Licenses. Each party using the BDTA for dog training must include at least one permittee, and the permittee must have a valid permit in his/her possession while engaged in dog training on the BDTA. For purposes of this Rule, a person or party will be considered to be engaged in dog training if they possess or release live bobwhite quail or pigeons at any time, or if they are present on the BDTA with pointing dogs, spaniels or retrievers during the time quail, woodcock, or waterfowl season is closed on the WMA. Each BDTA requires a unique permit and permits are valid only on the specific BDTA for which the permit is issued. Permits will not be issued to applicants with Class 2 or higher wildlife violation convictions or guilty pleas within 3 years of the date of application. All users of the BDTA must comply with the WMA self-clearing permit requirements. Any person who takes or attempts to take released or wild bobwhite quail or pigeons on the BDTA must comply with applicable hunting license and WMA permit requirements.

D. Dogs. Only recognizable breeds of pointing dogs, spaniels, and retrievers may be trained on the BDTA. All dogs must wear a collar or tag imprinted with the name and phone number of the owner or trainer. Trainers shall not knowingly allow or encourage their dogs to pursue rabbits, raccoons, or other wildlife.

E. Birds. Only bobwhite quail or pigeons may be released for dog training activities on the BDTA. Bobwhite quail and pigeons may only be released within the boundaries of the BDTA. Bobwhite quail and pigeons may be shot in conjunction with dog training activities. When WMA hunting seasons are closed, only bobwhite quail and pigeons may be taken and possessed. When the WMA quail or woodcock hunting season is closed, bobwhite quail and pigeons may only be shot within the boundaries of the BDTA. No more than 6 quail per day may be released, taken, or possessed per permittee. For example, a party consisting of 1 permit holder and 2 helpers may not possess, release, or take more than 6 quail per day. Wild quail may be taken on the BDTA at any time the BDTA is open to dog training and must be included in the 6-bird limit. There is no limit on the number of pigeons that may be taken, released, or possessed. All quail must be marked with a Department provided leg band prior to entering the WMA, and if the bird is shot or recaptured, the band must remain on the bird until arrival at the trainer's domicile. Wild quail taken on the BDTA must immediately be marked with a LDWF issued band. Pigeons are not required to be banded. Bands will be provided by LDWF when the permit is issued. Persons in possession of live bobwhite quail must have a valid game breeders license or bill of sale from a licensed game breeder.

F. Firearms. When the WMA hunting seasons are closed, only shotguns with shells containing shot not larger than lead size 8 or steel size 7 are permitted on the BDTA. Firearms must be encased or broken down upon entering and leaving the BDTA when the WMA hunting seasons are closed. Pistols capable of firing only blanks are also permitted.

G. Seasons. Unless specified, BDTAs are open to dog training all year, except all BDTAs are closed to bird dog training activities during the applicable WMA turkey season and modern firearm either-sex deer season. Additional closure periods may be adopted for some BDTAs. Such closure periods will be listed in the annual hunting regulations pamphlet for the WMA on which the BDTA is located.

H. Hunter Orange Requirements. Persons engaged in dog training on BDTAs during WMA hunting seasons must comply with WMA hunter orange requirements.

I. Wildlife Management Area Regulations. Except as provided herein, all rules and hunting seasons applicable to the WMA on which the BDTA is located are also applicable to the BDTA. Additional regulations may be adopted for some BDTAs and will be listed in the annual hunting regulations pamphlet for the WMA on which the BDTA is located.

J. Violation of Rules. A person who is convicted or enters a guilty plea for violation of any provision of this Rule shall be guilty of a Class 2 violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:109(B), R.S. 56:115, and R.S. 56:141(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 31:2268 (September 2005).

Dwight Landreneau
Secretary

0509#025

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Deer and Elk Importation (LAC 76:V.117)

The Wildlife and Fisheries Commission does hereby amend the rules governing white-tailed deer importation.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 1. Wild Quadrupeds
§117. Deer and Elk Importation

A. Definitions

Elk or Red Deer any animal of the species Cervus elaphus.

Mule Deer or Black-Tailed Deer any animal of the species Odocoileus hemionus.

White-Tailed Deer any animal of the species Odocoileus virginianus.

B. No person shall import, transport or cause to be imported or transported live white-tailed deer, mule deer, or black-tailed deer (hereinafter "deer"), into or through the state of Louisiana. No person shall import, transport or cause to be imported or transported, live elk or red deer (hereinafter "elk") into or through Louisiana in violation of any Imposition of Quarantine by the Louisiana Livestock Sanitary Board. Any person transporting deer or elk between licensed facilities within the state must notify the Department of Wildlife and Fisheries and provide information as required by the department prior to departure from the source facility and again upon arrival at the destination facility. A transport identification number will be issued upon providing the required information prior to departure. Transport of deer or elk between licensed facilities without a valid transport identification number is prohibited. Notification must be made to the Enforcement Division at (800) 442-2511. All deer or elk imported or transported into or through this state in violation of the provisions of this ban shall be seized and disposed of in accordance with Wildlife and Fisheries Commission and Department of Wildlife and Fisheries rules and regulations.

C. No person shall receive or possess deer or elk imported or transported in violation of this rule. Any person accepting delivery or taking possession of deer or elk from another person has a duty to review and maintain bills of sale, bills of lading, invoices, and all other documents which indicate the source of the deer or elk.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:1140 (June 1998), repromulgated LR 24:1325 (July 1998), amended LR 28:2206 (October 2002), LR 31:2269 (September 2005).

Dwight Landreneau
Secretary

0509#026

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry
Horticulture Commission

Licenses (LAC 7:XXIX.117)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Horticulture Commission, hereby proposes to amend regulations regarding the required standards of practice for the utility arborist license.

The Department of Agriculture and Forestry, Horticulture Commission intends to adopt these rules and regulations for the purpose of amending the utility arborist standards of practice.

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

Title 7
AGRICULTURE AND ANIMALS
Part XXIX. Horticulture Commission
Chapter 1. Horticulture
§117. Required Standards of Practice

A. - I.4. ...

5. Recommendations and pruning practices shall meet the standards outlined in the *International Society of Arboriculture Certification Manual* and *Best Management Practices Utility Pruning of Trees*, a publication by the International Society of Arboriculture.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended LR 9:410 (June 1983), LR 11:317 (April 1985), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 20:640 (June 1994), LR 27:1832 (November 2001), LR 31:

Family Impact Statement

The proposed amendments to Rules LAC 7:XXIX.117 regarding the required standards of practice for the landscape architect license and the re-issuance of suspended, revoked or un-renewed license or permit should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

All interested persons may submit written comments on the proposed Rules through October 25, 2005, to Craig Roussel, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. No preamble concerning the proposed Rules is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Licenses

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.

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

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

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

Licensed Utility Arborists will be directly affected by the proposed action. There are no significant changes in the actual standards; however, this reference source is more informative. For those utility arborists who wish to purchase the booklet, there will be a cost of approximately $5.00. There will be no effect on workload or paperwork.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Skip Rhorer	Robert E. Hosse
Assistant Commissioner	Staff Director
0509#022	Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs Maintaining Eligibility
(LAC 28:IV.705 and 805)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025 and 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. (SG0664NI)

The text of this proposed Rule may be viewed in the Emergency Rule section of this *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., October 10, 2005, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant ProgramsCMaintaining Eligibility

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

It is anticipated that any additional costs incurred by providing additional eligibility for tuition support for occupational and technical programs will be offset by the cost savings achieved by having students remain in this type of program instead of the more expensive academic programs.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

The proposed changes will enable students to receive additional occupational or technical training making them more productive and effective members of the workforce. Businesses in the state will benefit by the increase in the pool of qualified and highly trained workers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will increase as the pool of skilled and highly trained workers increases.

George Badge Eldredge	H. Gordon Monk
General Counsel	Legislative Fiscal Officer
0509#004	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary

Incorporation by Reference of 40 CFR Part 63
as It Applies to Major Sources
(LAC 33:III.5122)(AQ254)

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.5122 (Log #AQ254).

This proposed rule removes 40 CFR Part 63, Subpart D, from the subparts of the federal regulations that are incorporated by reference by the department. This will correctly reflect the subparts that the state is responsible for. 40 CFR Part 63, Subpart D, was incorporated by reference inadvertently in previous rulemaking. The basis and rationale for this proposed rule are to correct the incorporation by reference to reflect the subparts that the state is responsible for.

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 51. Comprehensive Toxic Air Pollutant Emission Control Program

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

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

A. - C.2. …

3. 40 CFR Part 63, Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, and Subpart E, Approval of State Programs and Delegation of Federal Authorities, are not included in this incorporation by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

A public hearing will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ254. Such comments must be received no later than November 1, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ254. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525

Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Incorporation by Reference of 40 CFR Part 63 as It Applies to Major Sources

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

There are no expected implementation costs or savings to state or local governmental units by the proposed rule.

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

There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.

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

There are no estimated costs or significant economic benefits to directly affected persons or nongovernmental groups by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment by the proposed rule.

Herman Robinson, CPM	Robert E. Hosse
Executive Counsel	Staff Director
0509#046	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary

Remediation of Sites with Contaminated Media
(LAC 33:V.109)(HW084)

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.109.Hazardous Waste Definition (Log #HW084).

Current regulation causes contaminated environmental media to retain the description of having RCRA-listed waste "contained-in," therefore complicating and impeding the remediation of the site or possibly halting it completely due to administration and disposal issues. This rule will remove a regulatory hurdle that deters site remediation by promulgating the guidance recommended by the Environmental Protection Agency (EPA). One of the most significant impediments to progress in the RCRA corrective action program has been the high cost of remediation waste management. Consequently, EPA has devoted much attention to management of remediation wastes and instituted a number of changes to the corrective action program that are designed to tailor management requirements to the risks posed by the wastes. The waste handling process will be simplified by reducing administrative requirements and providing greater consistency with non-RCRA waste handling requirements and practices. This will provide strong motivation to initiate and accelerate voluntary remediation of contaminated sites without increasing risks to human health or the environment. This rule will promulgate Emergency Rule HW084E6, which was effective July 30, 2005, and published in the August 20, 2005, issue of the *Louisiana Register*. The basis and rationale for this rule are to promote voluntary remediation of contaminated sites without increasing risks to human health.

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 1. General Provisions and Definitions
§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Hazardous Waste a *solid waste*, as defined in this Section, is a hazardous waste if:

1. - 2.c.vii. …

d. it consists of an environmental medium (soil, sediment, surface water, or groundwater) that contains one or more hazardous wastes listed in LAC 33:V.4901 (unless excluded by one of the exclusions contained in this definition) or that exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903. Environmental media no longer contain a hazardous waste when the concentration of the hazardous constituent that serves as the basis for the hazardous waste being listed (as shown in LAC 33:V.4901.Table 6, Table of Constituents that Serve as a Basis for Listing Hazardous Waste; or if the constituent is not listed in Table 6, as identified in LAC 33:V.2299; or if the constituent is not listed in either of these locations, as determined by the department on a case-by-case basis) remaining in the medium is below applicable RECAP screening standards (LAC 33:I.Chapter 13) and the medium no longer exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903. Land disposal treatment standards (LAC 33:V.2299) apply prior to placing such an environmental medium into a land disposal unit even though the medium may no longer contain a hazardous waste. Any person claiming this exclusion shall have records supporting the exclusion.

e. Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by using an analytical method from LAC 33:V.Chapter 49.Appendix A to show that the used oil does not contain significant

concentrations of halogenated hazardous constituents listed in LAC 33:V.3105.Table 1).

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

ii. The rebuttable presumption does not apply to used oils contaminated with Chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

3. - 6.b. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

A public hearing will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW084. Such comments must be received no later than November 1, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW084. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Remediation of Sites with Contaminated Media

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

There are no implementation costs to state or local governmental units from this proposed rule. There may be some savings to local governmental units regarding remediation costs of contaminated sites.

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

There should be no significant net increase or decrease in revenues due to the proposed action. Any minimal decrease in fees or revenues realized by the state due to the change from hazardous waste to solid waste reportable tonnage will likely be partially offset by the increase in voluntary cleanup disposal fees.

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

Commercial businesses, industries, local governments and individual property owners could see a savings in remediation costs of contaminated sites due to a reduction in disposal and transportation costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule could stimulate environmental consulting business and employment by construction companies performing clean-up procedures, due to accelerated activity of owners/operators performing voluntary and necessary remediation of contaminated sites.

Herman Robinson, CPM	Robert E. Hosse
Executive Cousel	Staff Director
0509#047	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary

Waste Tire Management Fund Grants and Loans
(LAC 33:VII.10505, 10539, 10541 and 10543)(SW040P)

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 adopt the Solid Waste regulations, LAC 33:VII.10505, 10537, 10538, and 10539 (Log #SW040P).

The rule provides the guidelines for persons to apply for grants and loans from the Waste Tire Management Fund. The rule provides a formal process for persons applying for the use of the funds to supply the information necessary for the department to make a decision on whether the proposal serves the purpose of solving the state's waste tire problem. The rule also provides for penalties for violations of the terms and conditions imposed on the use of the funds. Act 789 of the 2003 Regular Session of the Louisiana Legislature amended R.S. 30:2418(H)(3) to provide that 5 percent of the funds in the Waste Tire Management Fund be set aside for providing technical assistance to encourage market research and development projects and to encourage the development of products that are marketable and provide a beneficial use and for promotion of those products that have a beneficial use. The basis and rationale for this proposed rule are to provide guidance on applying for grants and loans from the Waste Tire Management Fund.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 2. Recycling

Chapter 105. Waste Tires

§10505. Definitions

A. The following words, terms, and phrases, when used in conjunction with the Solid Waste Rules and Regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

* * *

Applicant any person submitting a grant and or loan application for funds from the Waste Tire Management Fund.

* * *

Grant any funds awarded by the department from the Waste Tire Management Fund to a person subject to a grant agreement.

Grant Agreement a written contract or other written agreement between the department and the recipient of a grant that defines the conditions, goals, and responsibilities of the recipient and the department.

Grant Application an application meeting the requirements of LAC 33:VII.10541 from a person making a request for a grant from the Waste Tire Management Fund.

Grantee the recipient of a grant or loan.

Loan any issuance of funds by the department from the Waste Tire Management Fund to a person subject to a loan agreement.

Loan Agreement a written contract or other written agreement between the department and the recipient of a loan that defines the conditions, goals, and responsibilities of the recipient and the department.

Loan Application an application meeting the requirements of LAC 33:VII.10541 from a person making a request for a loan from the Waste Tire Management Fund.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000), LR 27:829 (June 2001), LR 27:2226 (December 2001), LR 28:1953 (September 2002), LR 29:2779 (December 2003), amended by the Office of Environmental Assessment, LR 31:1323 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

§10539. Grants and Loans Applicability

A. The department may award a grant or loan to a person for any use that serves the purpose of solving the state's waste tire problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:

§10541. Application for a Grant or Loan

A. A person may apply for a grant or loan from the Waste Tire Management Fund by making application to the Department of Environmental Quality, Office of Management and Finance. The grant or loan application must be submitted on a form obtained from the department, which shall be available on the department's website. Along with this form, the request for a grant or loan must include information on the following non-exclusive items:

1. a detailed description of the project for which the grant or loan is requested and how the project meets the requirements of R.S. 30:2418(G) that the funds be used "solely for the purpose of solving the state's waste tire problem";
2. the amount of the grant or loan request;
3. the projected time frame for completion of the project for which the grant or loan is requested;
4. an analysis of how the grant or loan monies will be used to encourage market research and development, provide for products that are marketable and that provide for a beneficial use, and/or provide for promotion of those products;
5. a detailed explanation of how the grantee will account for the use of the grant or loan funds;
6. procedures for reporting to the department on an annual basis the status of the project. The department may require additional reporting;
7. how the recipient will provide for any permits that may be necessary in order for the project to be completed, and the status of the applicant's efforts to obtain the necessary permits; and
8. any other information deemed necessary by the department.

B. Upon receipt of the grant application or loan application, the department shall review the application, may request additional information from the applicant, may deny the application, or may grant the application.

1. The denial of a grant application or loan application is a final decision of the administrative authority.

2. The granting of the application does not award funds, but allows for the applicant and the department to enter into a grant or loan agreement. The grant or loan agreement constitutes the conditions, goals, and responsibilities of the recipient and the department. The grant agreement or loan agreement, as a condition of the agreement, may require offsets for amounts due from any subsidy payments made in accordance with LAC 33:VII.10535.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:

§10543. Violations

A. Failure to Comply. The grantee shall comply with all provisions of the grant agreement or loan agreement. In the event of a violation, the department may take any enforcement action authorized by the Act, including but not limited to:

1. issuance of a compliance order;

2. issuance of a notice of potential penalty and/or a penalty;

3. filing suit for recovery of the grant or loan amounts; or

4. the placing of a lien on any real property of the grantee for the amount of the grant or loan funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:

A public hearing will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW040P. Such comments must be received no later than November 1, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of SW040P. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Waste Tire Management
Fund Grants and Loans

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

There will be no costs to state or local governmental units as a result of the implementation of this rule.

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

The proposed rule will have no effect on revenue collections of state or local governmental units.

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

The proposed rule will result in no costs to directly affected persons or non-governmental groups. The proposed rule will make available funds for research, product development, and product promotion, which may provide economic benefits to persons engaging in these activities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule may have positive effects on competition and employment in the affected class of persons engaged in research, product development, and product promotion.

Herman Robinson, CPM	Robert E. Hosse
Executive Counsel	Staff Director
0509#048	Legislative Fiscal Office

NOTICE OF INTENT

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

Hospital Licensing Standards
(LAC 48:I.9469 and 9505-9521)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.9469, 9505-9515 and repeal §§9517-9521 as authorized by R.S. 40:2100-2115 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 that established new regulations governing the licensing of hospitals (*Louisiana Register,* Volume 29, Number 11). The bureau now proposes to amend the November 20, 2003 Rule in order to clarify under what conditions outpatient services can be offered when the corresponding service is not offered on an inpatient basis. The bureau also proposes to bring requirements for obstetrical and newborn services in line with recommendations from the *National Guidelines for Perinatal 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. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing

Chapter 93. Hospitals

Subchapter O. Outpatient Services (Optional)

§9469. General Provisions and Organization

A. ...

B. Outpatient services shall be appropriately organized, integrated with, and provided in accordance with the standards applicable to the same service provided by the hospital on an inpatient basis.

1. Outpatient services shall be provided only under conditions stated in Subparagraphs a or b.i.-ii below.

a. Outpatient services may be provided by a hospital if that hospital provides inpatient services for the same area of service. For example, a hospital may provide psychiatric outpatient services if that hospital provides psychiatric services on an inpatient basis.

b. Outpatient services may be provided by a hospital that does not provide inpatient services for the same area of service only if that hospital has a written policy and procedure to ensure a patient's placement and admission into an inpatient program to receive inpatient services for that area of service. The policy and procedure must ensure that the hospital is responsible for coordination of admission into an inpatient facility and must include, but not be limited to, the following:

i. the hospital personnel and/or staff responsible for coordination of placement and admission into an inpatient facility;

ii. the procedure for securing inpatient services for that patient.

2. For all outpatient services, there shall be established methods of communication as well as established procedures to assure integration with inpatient services that provide continuity of care.

3. When patients are admitted, pertinent information from the outpatient record shall be provided to the inpatient facility so that it may be included in the inpatient record.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2423 (November 2003), LR 31:

Subchapter S. Perinatal Services (Optional)

§9505. General Provisions

A. This Subchapter S requires that the level of care on the Obstetrical Unit and the Neonatal Intensive Care Unit shall be at the identical level except for free standing children's hospitals. All hospitals with existing obstetrical and neonatal services must be in compliance with this Subchapter S within one year of the promulgation date of this rule. All new providers of obstetrical and neonatal services will be required to be in compliance with this Subchapter S immediately upon promulgation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9507. Obstetrical Services

A. These requirements are applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care Units. There are four established obstetrical levels of care units:

1. Obstetrical Level I Unit;
2. Obstetrical Level II Unit;
3. Obstetrical Level III Unit; and
4. Obstetrical Level III Regional Unit.

C. Obstetrical services shall be provided in accordance with current acceptable standards of practice as delineated in the current AAP/ACOG *Guidelines for Perinatal Care*. Each advanced level of care unit shall provide all services and meet the personnel requirements of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of a Level I, II, and III units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9509. Obstetrical Unit Functions

A. Obstetrical Level I Unit

1. General Provisions

a. Care and supervision for low risk pregnancies greater or equal to 35 weeks gestation shall be provided.

b. There shall be a triage system for identification, stabilization and referral of high risk maternal and fetal conditions beyond the scope of care of a Level I Unit.

c. There shall be a written transfer agreement with a hospital which has an approved appropriate higher level of care.

d. The unit shall provide detection and care for unanticipated maternal-fetal problems encountered in labor.

e. Blood and fresh frozen plasma for transfusion shall be immediately available.

f. Postpartum care facilities shall be available.

g. There shall be capability to provide for resuscitation and stabilization of inborn neonates.

h. The facility shall have a policy for infant security and an organized program to prevent infant abductions.

i. The facility shall support breast feeding.

j. The facility shall have data collection and retrieval capabilities including current birth certificate in use, and shall cooperate and report the requested data to the appropriate supervisory agencies for review.

k. The facility shall have a program in place to address the needs of the family, including parent-sibling-neonate visitation.

l. The facility shall have written transport agreements. The transport service must be designed to be adequately equipped and have transport personnel with appropriate expertise for obstetrical and neonatal care during transport. Transport services shall meet appropriate local, state, and federal guidelines.

2. Personnel Requirements

a. Obstetrical services shall be under the medical direction of a qualified physician who is a member of the medical staff with obstetric privileges. The physician shall be Board Certified or Board Eligible in OB/Gyn or Family Practice Medicine. The physician has the responsibility of coordinating perinatal services with the pediatric chief of service.

b. The nursing staff must be adequately trained and staffed to provide patient care at the appropriate level of service. The facility shall utilize the guidelines for staffing as provided by the AAP and the ACOG in the current *Guidelines for Perinatal Care* (See Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall provide credentialed medical staff to ensure the capability to perform emergency Cesarean delivery within 30 minutes of the decision to operate (30 minutes from decision to incision).

d. Anesthesia, radiology, ultrasound, electronic fetal monitoring (along with personnel skilled in its use) and laboratory services shall be available on a 24-hour basis. Anesthesia services shall be available to ensure performance of a Cesarean delivery within 30 minutes as specified in Subparagraph c above.

e. At least one qualified physician or certified registered nurse midwife shall attend all deliveries, and at least one qualified individual capable of neonatal resuscitation shall attend all deliveries.

f. The nurse manager shall be a registered nurse (RN) with specific training and experience in obstetric care. The RN manager shall participate in the development of written policies, procedures for the obstetrical care areas, and coordinate staff education and budget preparation with the chief of service. The RN manager shall name qualified substitutes to fulfill duties during absences.

3. Physical Plant

a. Obstetrical patients shall not be placed in rooms with non-obstetrical patients.

b. Each room shall have at least one toilet and lavatory basin for the use of obstetrical patients.

c. The arrangement of the rooms and areas used for obstetrical patients shall be such as to minimize traffic of patients, visitors, and personnel from other departments and prevent traffic through the delivery room(s).

d. There shall be an isolation room provided with hand washing facilities for immediate segregation and isolation of a mother and/or baby with a known or suspected communicable disease.

e. Any new construction or major alteration of obstetrical units shall have a facility to enable Cesarean section deliveries in the obstetrical unit.

B. Obstetrical Level II Unit

1. General Provisions

a. The role of an Obstetrical Level II unit is to provide care for most obstetric conditions in its population, but not to accept transports of obstetrical patients with gestation age of less than 32 weeks or 1,500 grams if delivery of a viable infant is likely to occur.

b. Conditions which would result in the delivery of an infant weighing less than 1,500 grams or less than 32 weeks gestation shall be referred to an approved Level III or Level III regional obstetrical unit unless the patient is too unstable to transport safely. Written agreements with approved obstetrical Level III and/or obstetrical Level III regional units for transfer of these patients shall exist for all obstetrical Level II units.

c. The unit shall be able to manage maternal complications of a mild to moderate nature that do not surpass the capabilities of a board certified obstetrician/gynecologist.

d. The needed subspecialty expertise is predominantly neonatal although perinatal cases might be appropriate to co-manage with a perinatologist.

e. Ultrasound equipment shall be on site, in the hospital, and available to labor and delivery 24 hours a day.

2. Personnel Requirements

a. The chief of obstetric services shall be a board-certified obstetrician or an active candidate for certification in obstetrics. This obstetrician has the responsibility of coordinating perinatal services with the neonatologist or pediatrician in charge of the neonatal intensive care unit (NICU).

b. A board-certified radiologist and a board-certified clinical pathologist shall be available 24 hours a day. Specialized medical and surgical consultation shall be readily available.

C. Obstetrical Level III Unit

1. General Provisions

a. There shall be provision of comprehensive perinatal care for high risk mothers.

b. The unit shall provide care for the most challenging of perinatal conditions. Only those conditions requiring a medical team approach not available to the perinatologist in an obstetrical Level III unit shall be transported to an obstetrical Level III regional unit.

c. Cooperative transfer agreements with approved obstetrical Level III regional units shall exist for the transport of mothers and fetuses requiring care unavailable in an obstetrical Level III unit or that are better coordinated at an obstetrical Level III regional unit.

d. Obstetric imaging capabilities to perform targeted ultrasound examination in cases of suspected abnormalities shall be available.

e. Genetic counseling and diagnostics shall be provided.

f. Ongoing educational opportunities shall be provided through organized educational programs.

g. This unit shall provide for and coordinate maternal transport with obstetrical Level I and II units.

2. Personnel Requirements

a. The chief of the obstetrical unit providing maternal-fetal medicine at a Level III unit shall assure that appropriate care is provided by the primary attending physician for high risk maternal patients and shall be:

i. board certified in maternal-fetal medicine; or

ii. an active candidate for subspecialty certification in maternal-fetal medicine; or

iii. a board-certified obstetrician with experience in maternal-fetal medicine and credentialing to care for high risk mothers.

b. If there is no hospital based perinatologist, a written consultative agreement shall exist with an approved obstetrical Level III or Level III regional obstetrical unit with a hospital based perinatologist. The agreement shall

also provide for a review of outcomes and case management for all high risk obstetrical patients for educational purposes.

c. A board-certified anesthesiologist with special training or experience in maternal-fetal anesthesia services at a Level III unit shall direct obstetrical anesthesia services. Personnel, including CRNAs, with credentials to administer obstetric anesthesia shall be in-house 24 hours a day.

D. Obstetrical Level III Regional Unit

1. General Provisions

a. The unit shall have the ability to care for both mother and fetus in a comprehensive manner in an area dedicated to the care of the critically ill parturient.

b. These units shall provide for and coordinate maternal and neonatal transport with Level I, II and III NICU units throughout the state.

2. Personnel Requirements

a. The chief of service at the Level III regional obstetrical unit must be a board-certified perinatologist.

b. The obstetrical Level III Regional unit shall have the following obstetrical specialties or subspecialties on staff and clinical services available to provide consultation and care to the parturient in a timely manner:

i. maternal fetal medicine;
ii. cardiology;
iii. neurology;
iv. neurosurgery; and
v. hematology.

c. Subspecialists to provide consultation in the care of the critically ill parturient shall be on staff in the following areas:

i. adult critical care;
ii. cardiothoracic surgery;
iii. nephrology;
iv. pulmonary medicine;
v. endocrinology;
vi. urology;
vii. infectious disease; and
viii. gastroenterology.

d. Personnel qualified to manage obstetrical emergencies shall be in house 24 hours per day, including CRNAs, with credentials to administer obstetrical anesthesia.

e. A lactation consultant shall be on staff to assist breast feeding mothers.

f. Registered nurses with experience in the care of high risk maternity patients shall be in house on a 24-hour basis.

g. A nutritionist and a social worker shall also be available for the care of these patients.

3. - 7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9511. Neonatal Intensive Care

A. This §9511 is applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care. There are four established neonatal levels of care units:

1. Neonatal Level I Unit;
2. Neonatal Level II Unit;
3. Level III NICU Unit; and
4. Level III regional NICU.

C. Each advanced level of care unit shall provide all services and meet the personnel requirements of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of the Level I, II, and III units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2428 (November 2003), amended LR 31:

§9513. Neonatal Unit Functions

A. Level I Neonatal Unit

1. General Provisions

a. The unit shall have the capability for resuscitation and stabilization of all inborn neonates in accordance with Neonatal Resuscitation Program (NRP) guidelines. The unit shall stabilize unexpected small or sick neonates before transfer to the appropriate advanced level of care.

b. The unit shall maintain consultation and transfer agreements with an approved Level II or III as appropriate, and an approved Level III regional NICU, emphasizing maternal transport when possible.

c. There shall be a defined nursery area with limited access and security or rooming-in facilities with security.

d. Parent and/or sibling visitation/interaction with the neonate shall be provided.

e. The unit shall have the capability for data collection and retrieval.

2. Personnel Requirements

a. The unit's chief of service shall be a physician who is board certified or board eligible in pediatric or family practice medicine.

b. The nurse manager shall be a registered nurse with specific training and experience in neonatal care. The RN manager shall participate in the development of written policies and procedures for the neonatal care areas, and coordinate staff education and budget preparation with the chief of service. The RN manager shall name qualified substitutes to fulfill duties during absences.

c. Registered nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level I neonatal unit shall be 1:6-8. This ratio reflects traditional newborn nursery care. If couplet care or rooming-in is used, a registered nurse who is responsible for the mother should coordinate and administer neonatal care. If direct assignment of the nurse is also made to the nursery to cover the newborn's care, there shall be double assignment (one nurse for the mother-neonate couplet and one for just the neonate if returned to the nursery). A registered nurse shall be available at all times, but only one may be necessary as most neonates will not be physically present in the nursery. Direct care of neonates in the nursery may be provided by ancillary personnel under the registered nurse's direct supervision. Adequate staff is needed to respond to acute and emergency situations.

B. Neonatal Level II Unit

1. General Provisions

a. There shall be management of small, sick neonates with a moderate degree of illness that are admitted or transferred.

b. There shall be neonatal ventilatory support, vital signs monitoring, and fluid infusion in the defined area of the nursery. Neonates requiring greater than 24-hour continuous ventilatory support shall be transferred to an approved Level III or Level III regional unit.

c. Neonates born at a Level II facility with a birth weight of less than 1,500 grams shall be transferred to an approved Level III or Level III regional NICU unit unless a neonatologist is providing on-site care in the hospital.

d. Neonates requiring transfer to a Level III or Level III regional NICU may be returned to an approved Level II unit for convalescence.

2. Personnel Requirements

a. A board-certified pediatrician with special interest and experience in neonatal care or a neonatologist shall be the chief of service.

b. Registered nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level II neonatal unit shall be 1:3-4 (See Table 2-1 of §9515, Additional Support Requirements).

C. Level III NICU

1. General Provisions

a. There shall be a written neonatal transport agreement with an approved Level III regional unit. There shall be an organized outreach educational program.

b. If the neonatologist is not in-house, there shall be a pediatrician who has successfully completed the Neonatal Resuscitation Program (NRP) or one neonatal nurse practitioner in-house for Level III NICU patients.

c. Direct consultation with a neonatologist shall be available 24 hours per day.

2. Personnel Requirements

a. The chief of service of a Level III NICU shall be a board-certified neonatologist. The following exceptions are recognized.

i. A board-certified pediatrician who is an active candidate for a subspecialty certification in neonatal medicine.

ii. In 1995, those physicians in existing units who were designated as the chief of service of the unit and who were not neonatal or perinatal board certified, were granted a waiver by written application to the Office of the Secretary, Department of Health and Hospitals. This waiver shall be maintained as it applies only to the hospital where that chief of service's position is held. The physician cannot relocate to another hospital nor can the hospital replace the chief of service for whom the exception was granted and retain the exception.

b. Medical and surgical consultation shall be readily available and pediatric sub-specialists may be used in consultation with a transfer agreement with a Level III regional NICU.

c. Registered nurse-to-patient ratios may vary in accordance with patient needs. However, the ratio for a Level III NICU unit shall be 1:2-3 (See Table 2-1 of §9515, Additional Support Requirements).

D. Level III Regional NICU

1. General Provisions

a. Twenty-four-hour per day in-house coverage shall be provided by a neonatologist, a second year or higher pediatric house officer, or a neonatal nurse practitioner. If the neonatologist is not in-house, there shall be immediate consultative ability with the neonatologist and he/she shall be available to be on-site in the hospital within 30 minutes.

b. The unit shall have a transport team and provide for and coordinate neonatal transport with Level I, Level II units and Level III NICUs throughout the state. Transport shall be in accordance with national standards as published by the American Academy of Pediatrics Section on neonatal and pediatric transport.

c. The unit shall be recognized as a center of research, educational and consultative support to the medical community.

2. Personnel Requirements

a. The chief of service shall be a board-certified neonatologist.

b. Nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level III regional NICU shall be 1:1-2 (See Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall have the following pediatric specialties/subspecialties on staff and clinical services available to provide consultation and care to neonates in a timely manner:

i. anesthesia;
ii. pediatric surgery;
iii. pediatric cardiology;
iv. pediatric ophthalmology.

d. Subspecialists to provide consultation in the care of the critically ill neonate shall be on staff in the following areas:

i. pediatric neurology;
ii. pediatric hematology;
iii. genetics;
iv. pediatric nephrology;
v. pediatric endocrinology;
vi. pediatric gastroenterology;
vii. pediatric infectious disease;
viii. pediatric pulmonary medicine;
ix. orthopedic surgery;
x. pediatric urologic surgery;
xi. ENT surgery;
xii. cardiothoracic surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 31:

§9515. Additional Support Requirements

A. A Bioethics Committee shall be available for consultation with care providers at all times.

B. The following support personnel shall be available to provide consultation and care and services to Level II, Level III and Level III regional obstetrical, neonatal, and NICU units in a timely manner:

1. at least one full-time medical social worker who has experience with the socioeconomic and psychosocial problems of high-risk mothers and fetuses, sick neonates, and their families (additional medical social workers may be required if the patient load is heavy);

2. at least one occupational or physical therapist with neonatal expertise;

3. at least one registered dietitian/nutritionist who has special training or experience in perinatal nutrition and can

plan diets that meet the special needs of high-risk mothers and neonates.

C. The following support personnel shall be immediately available to be on-site in the hospital for Level II, Level III and Level III regional obstetrical, neonatal, and NICU units:

1. qualified personnel for support services such as laboratory studies, radiologic studies, and ultrasound examinations (these personnel shall be readily available 24 hours a day); and

2. registered respiratory therapists or registered nurses with special training who can supervise the assisted ventilation of neonates with cardiopulmonary disease (optimally, one therapist is needed for each four neonates who are receiving assisted ventilation).

D. The staffing guidelines shall be those recommended by the current AAP/ACOG *Guidelines for Perinatal Care*. (See Table 2-1 below)

Table 2-1. Recommended Registered Nurse/Patient Ratios For Perinatal Care Services

Nurse/Patient Ratio	Care Provided
Intrapartum	
1:2	Patients in labor
1:1	Patients in second stage of labor
1:1	Patients with medical or obstetric complications
1:2	Oxytocin induction or augmentation of labor
1:1	Coverage for initiating epidural anesthesia
1:1	Circulation for Cesarean delivery
Antepartum/ Postpartum	
1:6	Antepartum/postpartum patients without complications
1:2	Patients in postoperative recovery
1:3	Antepartum/postpartum patients with complications but in stable condition
1:4	Recently born infants and those requiring close observation
Newborns	
1:6-8	Newborns requiring only routine care
1:3-4	Normal mother-newborn couplet care
1:3-4	Newborns requiring continuing care
1:2-3	Newborns requiring intermediate care
1:1-2	Newborns requiring intensive care
1:1	Newborns requiring multi-system support
1:1 or Greater	Unstable newborns requiring complex critical care

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 31:

§9517. Neonatal Unit Functions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), repealed LR 31:

§9519. Medical Staff

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 31:

§9521. Staffing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 31:

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 inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, October 25 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Hospital Licensing Standards

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 FY 05-06, 06-07 and 07-08. It is anticipated that $1,836 ($918 SGF and $918 FED) will be expended in FY 05-06 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 not affect federal revenue collections other than the federal share of the promulgation costs for FY 05-06. It is anticipated that $918 will be expended in FY 05-06 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend hospital licensing standards to clarify the conditions and timelines under which outpatient services can be offered when the corresponding service is not offered on an inpatient basis (approximately 607 providers). The rule also proposes to bring the requirements for Obstetrical and Newborn services in line with the recommendations from the National Guidelines for Perinatal Care (published by the American Academy of Pediatrics, 5th Edition approximately 90 hospitals). It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment.

Ben A. Bearden
Director
0509#062

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Inpatient Hospital Services—State Hospitals
Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 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 June of 1983 which established a reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register*, Volume 9, Number 6). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles with a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 30, 1981 through September 29, 1982. In a Rule promulgated in October of 1984, separate per diem limitations were established for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation (*Louisiana Register*, Volume 10, Number 10). A Rule was later promulgated in October 1992, which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services. The reimbursement methodology was subsequently amended in a Rule promulgated in June of 1994 which established a prospective payment methodology for nonstate hospitals (*Louisiana Register*, Volume 20, Number 6). These per discharge and per diem limitations in state acute hospitals were rebased by a Rule promulgated in December of 2003 (*Louisiana Register*, Volume 29, Number 12). The bureau subsequently promulgated an Emergency Rule to amend the reimbursement methodology for inpatient services provided in state acute hospitals (*Louisiana Register*, Volume 31, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2005 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 no 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 reimbursement methodology for inpatient hospital services rendered in state acute hospitals to discontinue the requirement that state hospitals utilize target rate per discharge amounts and per diem limitations to determine the reimbursable Medicaid inpatient costs on the cost report. Inpatient hospital services provided by state acute hospitals shall be reimbursed at allowable costs and shall not be subject to per discharge or per diem limits.

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, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, October 25, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Inpatient Hospital Services—State Hospitals; Reimbursement Methodology

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 05-06. It is anticipated that $204 ($102 SGF and $102 FED) will be expended in FY 05-06 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 not affect federal revenue collections other than the federal share of the promulgation costs for FY 05-06. It is anticipated that $102 will be expended in FY 05-06 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule, which continues the provisions of the July 1, 2005 Emergency Rule, proposes to amend the reimbursement methodology for inpatient services provided in state operated acute care hospitals (approximately 10 hospitals). It is anticipated that implementation of this proposed rule will not have an estimable cost or economic benefit to state hospitals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Ben A. Bearden
Director
0509#061

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medical Transportation Program
Emergency Ambulance Services
Certification for Ambulance Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 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 increase the reimbursement paid for designated emergency ambulance procedures by 1.4 percent (*Louisiana Register*, Volume 27, Number 11). The bureau subsequently adopted a Rule which established the provisions governing the medical certification of emergency and non-emergency ambulance services (*Louisiana Register*, Volume 29, Number 11). The bureau promulgated an Emergency Rule effective July 25, 2005 to amend the November 20, 2001 and November 20, 2003 Rules governing reimbursement methodology and medical certification of emergency ambulance services. The bureau repealed the July 25, 2005 Emergency Rule and amended the November 20, 2003 Rule to discontinue the requirement for completion of a medical certification form for reimbursement of emergency ambulance services (*Louisiana Register*, Volume 31, Number 8). The bureau now proposes to continue the provisions of the August 3, 2005 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 no 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 discontinues the requirement for completion of the medical transportation certification form for reimbursement of emergency ambulance services. In order to submit a claim for Medicaid reimbursement, the emergency ambulance trip must meet the definition of emergency response as defined by the Centers for Medicare and Medicaid Services. All claims for emergency ambulance services are subject to post pay review.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, October 25 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Medical Transportation Program; Emergency Ambulance Services; Certification for Ambulance Services

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of $989,146 for FY 05-06, $1,121,521 for FY 06-07, and $1,155,166 for FY 07-08. It is anticipated that $204 ($102 SGF and $102 FED) will be expended in FY 05-06 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 $2,318,896 for FY 05-06, $2,629,385 for FY 06-07, and $2,708,267 for FY 07-08. It is anticipated that $102 will be expended in FY 05-06 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule discontinues the requirement for completion of the medical transportation certification form for reimbursement of emergency ambulance services (approximately 7,220 trips annually). In order to submit a claim for Medicaid reimbursement, an emergency ambulance trip must meet the definition of an emergency response as defined by the Centers for Medicare and Medicaid Services. It is anticipated that implementation of this proposed rule will increase program expenditures to providers of emergency ambulance services by approximately $3,307,838 for FY 05-06, $3,750,906 for FY 06-07, and $3,863,433 for FY 07-08.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Ben A. Bearden
Director
0508#059

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Office of the Secretary
Bureau of Primary Care and Rural Health

Medicare Rural Hospital Flexibility Program
Critical Access Hospitals
(LAC 48:I.7601-7613)

Editor's Note: This Notice of Intent, which was published on pages 2123-2125 of the August 20, 2005 issue of the *Louisiana Register*, is being republished to correct the date of the public hearing.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health proposes to amend LAC 48:I.7601-7615 as authorized by the Balanced Budget Act of 1997 (Public Law 105-33) and pursuant to Title XVIII of the Social Security Act and reauthorized by the Medicare Prescription, Improvement and Modernization Act of 2003. This proposed Rule is promulgated in accordance with Medicare, Medicaid, the State Children's Health Insurance Programs (SCHIP) Balanced Budget Refinement Act of 1999, the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health promulgated a Rule implementing the Medicare Rural Hospital Flexibility Program (MRHF) to assist rural communities in improving access to essential health care services through the establishment of limited service hospitals and rural health networks. The program created the Critical Access Hospital (CAH) as a limited service hospital eligible for Medicare certification and reimbursement (*Louisiana Register*, Volume 25, Number 8). The bureau now proposes to amend the August 20, 1999 Rule to revise the definition of "necessary provider" and revise other criteria to limit participation in the MRHF Program to Louisiana's existing small rural hospitals.

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 Primary Care and Rural Health hereby amends the Medicare Rural Hospital Flexibility Program. To qualify as a critical access hospital, the small rural hospital must complete the following designation, licensing and certification processes.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 76. Medicare Rural Hospital Flexibility Program (MRHF)
Subchapter A. Critical Access Hospitals
§7601. Definitions

A. The following word and terms, when used in this Chapter 76 shall have the following meanings, unless the context clearly indicates otherwise.

BPCRH Department of Health and Hospital, Office of the Secretary, Bureau of Primary Care and Rural Health.

CAH Critical Access Hospital.

CMS Centers for Medicare and Medicaid Services.

EACH/RPCH Essential Access Community Hospital/Rural Primary Care Hospital-a limited service rural hospital program.

EMS Emergency Medical Services.

Health Care Network an organization consisting of at least one CAH and one acute care hospital with agreements for patient referrals, emergency /non-emergency transportation and other services as feasible.

HPSA Health Professional Shortage Area.

HSS Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section.

MRHF Medicare Rural Hospital Flexibility Program.

MSA Metropolitan Statistical Area.

MUA Medically Underserved Area designated by the federal Office of Shortage Designations.

Necessary Provider a facility located in a primary care HPSA or MUA; or located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state; or a facility located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level or qualifies as a "rural hospital" under the Louisiana Rural Preservation Act.

Not-for Profit incorporated as a non-profit corporate entity.

Primary Care basic ambulatory health services that provide preventive, diagnostic and therapeutic care.

Primary Care Physicians includes general, family and internal medicine, pediatrics and obstetrics/gynecology.

QIO Quality Improvement Organization

Public Hospital hospital supported by public funds including city, service district and state hospitals.

Rural the CAH is located outside any area that is a Metropolitan Statistical Area, as defined by the Office of Management and Budget or qualifies as a rural hospital under the Louisiana Rural Preservation Act.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1478 (August 1999), amended LR 26:1480 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7603. Criteria for Designation as a CAH

A. A hospital must submit an application to the BPCRH and must meet the following criteria, or affirm that it can meet these criteria at the time of certification, to be designated as a CAH:

1. be a licensed hospital;
2. be currently participating in the Medicare program and meet applicable conditions of participation;
3. be located in a rural area:

a. may be a rural census tract in a Metropolitan Statistical Area as determined under the Goldsmith Modification, originally published in the *Federal Register* on February 27, 1992 and updated October 1, 2004; or

b. qualifies as a "rural hospital" under the Rural Preservation Act, RS 40:100.143;

4.a. be located more than a 35-mile drive or a 15-mile drive in mountainous terrain or areas with secondary roads, from the nearest hospital or CAH; or

b. be certified as a necessary provider by qualifying as a "rural hospital" under the Louisiana Rural Hospital Preservation Act RS 40:1300.143; and meeting at least one of the following:

i. be located in a primary care health professional shortage area (HPSA) or a medically underserved area (MUA); or

ii. be located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state; or

iii. be located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level;

c. provide not more than 25 acute care inpatient beds or swing-beds, meeting such standards as the secretary may establish, for providing inpatient care that does not exceed, as determined on an annual, average basis, 96 hours per patient.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1478 (August 1999), amended LR 26:1480 (July 2000), Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7609. Application Submission and Review

A. A hospital that wishes to be designated as a CAH is required to submit an application to the BPCRH. Application forms may be requested and submitted by interested hospitals at any time following HCFA approval of the state's Rural Health Care Plan and application.

B. On receipt of an application, the BPCRH will conduct a review to determining the eligibility of the applicant hospital for conversion and consistency with the criteria for designation detailed in §7603.

C. The supporting information to be included with the application is:

1. documentation of ownership, including names of owners and percent of ownership;

2. board resolution to seek CAH certification;

3. documentation of Medicare participation;

4. notification from BPCRH that location is in a HPSA or MUA;

5. affirmation that 24-hour emergency medical care services and medical control agreements are available including information on staffing arrangements;

6. documentation that facility meets rural hospital staffing requirements with the following exceptions:

a. the facility need not meet hospital standards regarding the number of hours per day or days of the week in which it must be open and fully staffed, except as required to make emergency medical care services available and to have nursing staff present if an inpatient is in the facility;

b. the facility may provide the services of a dietician, pharmacist, laboratory technician, medical technologist, and/or radiological technologist on a part-time, off site basis; and

c. inpatient care may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist, subject to the oversight of a physician who need not be present in the facility but immediately available in accordance with state requirements for scope of practice;

7. copy of a needs assessment, if available;

8. copy of a strategic plan for conversion;

9. copy of financial feasibility assessment.

D. Decision. If an application is complete, and all supporting documentation provided, the BPCRH will provide written notice to the applicant hospital.

1. If the application and required documentation supports conversion to a MRHF, after the effective date of the published rule, the BPCRH will provide a written notice of the designation to the applicant hospital and HSS.

2. If the application is incomplete or otherwise insufficient to allow designation, the BPCRH will provide written notice to the applicant outlining the actions necessary to correct the deficiencies. The hospital may then address the deficiencies and resubmit its application.

E. Once designated, a hospital may apply to the Bureau of Health Services Financing, Health Standards Section (HSS) of the Department of Health and Hospitals for an onsite survey.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1479 (August 1999), amended LR 26:1481 (July 2000), amended by the Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7611. Technical Assistance

A. The BPCRH is available to furnish basic technical assistance to hospitals and communities interested in CAH conversion such as providing program information helping with interpretation and completion of the application for designation, and identifying other sources of assistance and information.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1480 (August 1999), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7613. Program Monitoring and Evaluation

A. Ongoing monitoring and evaluation of the program will be conducted by the Quality Management Section of the BPCRH.

1. Strengths and weaknesses of the program and state policy affecting CAHs will be assessed, with the goal of identifying problem areas and developing solutions.

2. Results will be reported to the BPCRH Director who will assign program staff to work with other state agencies and interested parties to determine the necessity of changes and updates to the plan and state policy.

3. All plan changes will be forwarded to HCFA for review and approval.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1480 (August 1999), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

Family Impact Statement

1. The Effect on the Stability of the Family. None.
2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. None.
3. The Effect on the Functioning of the Family. None.
4. The Effect on Family Earnings and Budget. None.
5. The Effect on the Behavior and Personal Responsibility of Children. None.
6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. None.

Interested persons may submit written comments to Kristy Nichols, Bureau of Primary Care and Rural Health, P.O. Box 2870, Baton Rouge, LA 70821-2870. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 27, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Medicare Rural Hospital Flexibility ProgramCCritical Access Hospitals

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

The only implementation cost is the cost of printing the proposed rule. It is anticipated that $748 will be expended in SFY 2004-05 for the state's administrative cost of printing the Notice of Intent and final Rule.

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

It is not anticipated that the proposed rule amendments will have any material effect on the revenue collections of DHH or of any state or local governmental unit.

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

CAH hospitals receive cost-based reimbursement from Medicare. Consequently, there is no direct impact on the state's Medicaid program when a hospital converts to CAH status. It is anticipated that the proposed rule will enable two small rural hospitals to convert to CAH status that previously did not qualify. It also is anticipated that four hospitals in rural areas that are currently closed would be prohibited from reopening and converting to CAH status as a result of this rule. Consequently, there is an undeterminable potential cost savings that could occur because the four closed hospitals will more than likely not be able to reopen without CAH status.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

If the two hospitals previously ineligible for CAH conversion find that it is in their best interest to convert, the conversion could positively affect their ability to compete in their market and retain and attract employees. However, limiting the reopening of the other four hospitals will limit new employment opportunities in their communities via a reopened local hospital.

Kristy H. Nichols
Program Manager III
0509#016

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Computation of Net Allocable Income
from Louisiana Sources (LAC 61:I.1130)

Under the authority of R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1130 relative to the computation of net allocable income from Louisiana sources.

The primary purpose of this regulation is to update the corporation income tax regulation relating to the allocation of items of income and expense and to make the regulation easier to understand. Changes resulting from the enactment of the Louisiana Headquarters and Growth Act of 2005 are included. This regulation has not been revisited in depth since the corporate income tax statutes were enacted in 1986. This regulation will provide more guidance on the treatment of intangible assets than the current regulation.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered
Chapter 11. Income: Corporation Income Tax
§1130. Computation of Net Allocable Income from Louisiana Sources

A. Allocation of items of income and loss. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the state or states within which such items of income are earned or derived. The statute attributes every item of gross allocable income to a location and does not allow for any unallocated items of income. The principles embodied in the statute and this regulation are that items of allocable income from the use of tangible assets are allocated to the location of the tangible asset at the time of the use; income from the use of intangible assets is allocated to the business situs of the intangible asset, or in the absence of a business situs, to the commercial domicile of the corporation; and items of

allocable income from services are allocated to the location at which the service was performed.

1. Rents and Royalties from Immovable or Corporeal Movable Property

a. Rents and royalties from immovable or corporeal movable property shall be allocated to the state where such property is located at the time the income is derived.

b. Rents or royalties from incorporeal immovables, such as mineral interests, are allocated to the state in which the property subject to the interest is located.

2. Interest from Controlled Corporation

a. Under the provisions of R.S 47:287.738(F)(2), a corporation may elect to pay tax on interest income from a corporation that is controlled by the former through direct ownership of 50 percent or more of the voting stock of the latter.

b. The election is made for each taxable period by employing the method on the return or amended return.

c. If the election is made, interest from securities and credits that is received by the electing corporation from another corporation controlled by the former through the direct ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, as follows.

i. Real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income that it produces.

ii. The value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average value of such property at the beginning and close of the taxable period, determined on a comparable basis. If the average value does not fairly represent the average of the property owned during the year, the average value shall be obtained by dividing the sum of the monthly balances by the number of months in the taxable period.

iii. Value of Property to Be Used

(a). For purposes of this Subsection, the value of property to be used shall be determined using one of the following methods. The taxpayer will choose which valuation method to use on the first return filed following the effective date of this regulation on which a R.S. 47:287.738(F)(2) election is made by employing the chosen valuation method on the tax return. Once a valuation method is chosen, this valuation method must be used on all future returns upon which the R.S. 47:287.738(F)(2) election is made and cannot be changed without the approval of the secretary upon the showing of good cause:

(i). the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence; or

(ii). the value of property is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business;

(iii). the value of property is the value reflected on the taxpayer's books, so long as the value is not below zero.

(b). The secretary may require a different method of valuation or adjust reserves if the method elected by the taxpayer does not reflect the fair value of the property.

3. Royalties or Similar Revenue Received for the Use of Patents, Trademarks, Copyrights, Secret Processes, and Other Similar Intangible Rights

a. Royalties or similar revenue received for the use of patents, trademarks, copyrights, secret processes, and other similar intangible rights shall be allocated to the state or states in which such rights are used. The use referred to is that of the licensee rather than that of the licensor.

i. Example: X Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. During 2006, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X Company, Inc. the amount of $100,000 for such use. The entire royalty income of $100,000 is allocable to Louisiana.

ii. Example: ABC Company, Inc. is a trademark holding company incorporated in Delaware that owns certain trademarks relating to the sale of retail goods and/or services. In 2005, ABC entered into a licensing agreement with XYZ Retail Co. in which XYZ was authorized to use the trademark in exchange for consideration of royalty payments. In 2006, XYZ used the trademark to promote the sale of retail goods and/or services in Louisiana. The royalty payment attributable to the Louisiana stores was $250,000. ABC must allocate the royalty income of $250,000 to Louisiana.

b. Income from a mineral lease, royalty interest, oil payment, or other mineral interest shall be allocated to the state or states in which the property subject to such mineral interest is situated.

4. Income from Construction, Repair, or Other Similar Services

a. Income from construction, repair, or other similar services is allocable to the state or states in which the work is done.

b. The phrase other similar services means any work that has as its purpose the improvement of immovable property belonging to a person other than the taxpayer where a substantial portion of such work is performed at the location of such property.

i. It is not necessary that the services rendered actually result in the improvement of the immovable property.

ii. Mineral Properties. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property notwithstanding the fact that the well may have been dry.

c. Examples of other similar services include, but are not limited to:

i. landscaping services;

ii. the painting of houses;

iii. the removal of stumps from farmland; and

iv. the demolition of buildings.

B. Deduction of Expenses, Losses and Other Deductions From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the Louisiana income tax law that are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, that are not directly attributable to any item or class of gross income.

1. Interest Expense

a. The method of allocation and apportionment for interest set forth in these regulations is based on the approach that money is fungible and that interest expense is attributable to all activities and property regardless of any specific purpose for incurring an obligation on which interest is paid. Exceptions to the fungibility method are set forth in LAC 61:I.1130.B.1.b. The fungibility approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds and that the creditors of the taxpayer look to its general credit for repayment and thereby subject the money loaned to the risk of all of the taxpayer's activities. When money is borrowed for a specific purpose, such borrowing will free other funds for other purposes, and it is reasonable under this approach to attribute part of the cost of borrowing to such other purposes. Consistent with the principles of fungibility, except as otherwise provided, the aggregate of deductions for interest in all cases shall be considered related to all income producing activities and assets of the taxpayer and, thus, allocable to all the gross income that the assets of the taxpayer generate, have generated, or could reasonably have been expected to generate.

b. Exceptions to the fungibility method are allowed in the same circumstances that exceptions are allowed by IRC §861 and the regulations promulgated thereunder. These exceptions include:

i. the direct allocation of interest expense to the income generated by certain assets that are subject to qualified nonrecourse indebtedness;

ii. the direct allocation of interest expense to income generated by certain assets that are acquired in integrated financial transactions.

c. Interest Expense Applicable to Louisiana Gross Allocable Income. Interest expense that is applicable to assets that produce or that are held for the production of Louisiana gross allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana.

i. Except as otherwise provided, the amount of interest that is applicable to such assets shall be determined by multiplying the amount of interest expense applicable to total allocable assets, determined without reference to the income limitation in the case of investments in U.S. government bonds and notes held as temporary cash investments, by a ratio, the numerator of which is the average value of assets that produce or that are held for the production of Louisiana allocable income and the denominator of which is the average value of assets that produce or that are held for the production of allocable income within and without Louisiana.

ii. When Louisiana net apportionable income is determined on the separate accounting method, refer to LAC 61:I.1132.C.2 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

d. Interest Expense Applicable to Total Allocable Assets

i. Interest expense applicable to total allocable assets is interest expense that is applicable to assets that produce or that are held for the production of allocable income within and without Louisiana.

ii. When a R.S. 47:287.738(F)(2) election is made, assets that produce or that are held for the production of allocable income will include direct investments in 50 percent or more owned subsidiaries (other than normal trade accounts receivable) whether or not such investments, advances, or loans produce any income.

iii. The amount of interest that is applicable to assets producing or held for the production of allocable income shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of assets that produce or that are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer.

iv. Although income exempt from Louisiana income tax, such as interest, is not taxable and is therefore not included in allocable income, the adjustment for the amount of interest expense applicable to assets producing such income is computed in the same manner as in the case of assets producing allocable income.

(a). For convenience of computation such assets are grouped with assets producing or held for the production of allocable income.

(b). Whenever interest expense applicable to U.S. government bonds and notes that are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense that is attributable to such investments shall be limited to the amount of income derived from such investments.

(c). The amount of interest expense applicable to U.S. government bonds and notes that are held as temporary cash investments, determined without reference to the income therefrom, is that portion of the interest expense applicable to assets that produce or that are held for the production of allocable income, that the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all assets that produce or that are held for the production of allocable income.

e. Investments in Stock of Controlled Corporations When a corporation holds stock in corporations controlled by direct ownership of 50 percent or more of the voting stock of the latter, the stock shall be included in the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.

i. This stock is to be attributed as Louisiana assets on the basis of the proportion of the respective amounts of income upon which Louisiana income tax has been paid to all income, including exempt income, earned everywhere of the controlled corporation.

ii. Stock held in corporations exempt from Louisiana income tax shall not be included as a Louisiana asset for the purpose of this computation.

f. Loans to Controlled Corporations

i. When a R.S. 47:287.738(F)(2) election is made and the electing corporation loans interest-bearing funds to corporations controlled by direct ownership of 50 percent or more of the voting stock of the controlled corporation, the receivable shall be included in the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.

(a). These receivables are to be attributed as Louisiana assets on the basis of the ratio of the value of the controlled corporation's real and tangible personal property located in Louisiana to the value of such property within and without Louisiana.

(b). For the purpose of the allocation, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income that it produces.

ii. Receivables Resulting from Loans of Non-Interest Bearing Funds. When a R.S. 47:287.738(F)(2) election is made:

(a). receivables resulting from loans of non-interest bearing funds to controlled corporations are deemed to be assets producing or held for the production of allocable income for the purpose of determining the amount of interest expense applicable to assets that produce or that are held for the production of allocable income from sources within and without Louisiana;

(b). when receivables resulting from loans of non-interest bearing funds to controlled corporations have a Louisiana business situs, or, in the absence of a business situs, the lending corporation has a Louisiana commercial domicile, such receivables shall not be included in the numerator of the interest expense allocation formula for the purpose of LAC 61:I.1130.B.1.c., unless the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

g. Average Value

i. Except as otherwise provided in this Section, average value shall mean the value at the beginning of the taxable period plus the value at the end of the taxable period, the sum of which is divided by two.

ii. If the average value as calculated above does not fairly represent the average of the property owned during the year, the average value shall be obtained by dividing the sum of the monthly balances by the number of months in the taxable period.

h. Value of Property to Be Used

i. For purposes of this Subsection, the value of property to be used shall be determined using one of the following methods. The taxpayer will elect which method to use on the first income tax return filed for the taxable period following the taxable period in which these regulations take effect by employing the elected method on the tax return. Once made, the election is irrevocable, without the approval of the secretary upon the showing of good cause:

(a). the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence; or

(b). the value of property is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business; or

(c). the value of property is the value reflected on the taxpayer's books, so long as the value is not below zero.

ii. The secretary may require a different method of valuation or adjust reserves if the method elected by the taxpayer does not reflect the fair value of the property.

iii. Intangible assets that produce or that are held for the production of allocable income within and without Louisiana may acquire a business situs in more than one state. The percentage of the value of the asset that is to be attributed to Louisiana is a factual determination required to be made with respect to each asset and will take into consideration such factors as:

(a). the number of locations at which the asset is used;

(b). the number of days during the taxable period the asset is used within and without Louisiana;

(c). the amount of income that the asset generated within and without Louisiana; and

(d). the earning power of the asset at the time the interest expense is generated.

i. Examples. The following examples are applicable for both foreign and domestic corporations.

(a). Example 1. The XYZ Corporation has incurred interest expense in the amount of $150,000 during the year 2006 and has not elected to treat interest income from 50 percent or more owned subsidiaries as taxable income. The subsidiary of XYZ Corporation earns no income in Louisiana. During 2006 XYZ Corporation derived total allocable and exempt income and Louisiana allocable income as follows.

	Louisiana	Total
*Interest from 80% owned Subsidiary	$ -0-	$10,000
*Interest (interest bearing checking)	-0-	5,000
*Dividends	-0-	5,000
Net rent income	10,000	10,000
Trademark royalty income	4,000	10,000
Total	$14,000	$40,000

*Exempt but included with allocable income only for convenience in computing the applicable expense.

(i). Its assets, liabilities, and net worth as of January 1, 2006, and December 31, 2006, were as follows.

Assets		01/01/06		12/31/06
Cash (currency on hand)		$ 10,000		$ 10,000
Cash (non-interest bearing checking)		90,000		140,000
Cash (interest bearing checking)		110,000		220,000
Accounts receivable		780,000		800,000
Inventories		600,000		1,000,000
Stocks - 80% owned subsidiary		100,000		100,000

Assets		01/01/06		12/31/06
Trademark		80,000		80,000
Loan to 80% owned subsidiary		310,000		430,000
Real estate (rental property)	$ 100,000		$100,000	
Less depreciation reserve	20,000		25,000	
Net		80,000		75,000
Real estate	5,000,000		5,125,000	
Less depreciation reserve	1,080,000		1,300,000	
Net		3,920,000		3,825,000
Total Assets		$6,080,000		$6,680,000

Liabilities and Net Worth				
Accounts payable	$ 400,000		$1,000,000	
Bonds	3,000,000		3,000,000	
Total Liabilities		$3,400,000		$4,000,000
Capital stock	2,080,000		2,080,000	
Earned surplus	600,000		600,000	
Net Worth:		2,680,000		2,680,000
Total Liabilities and Net Worth		$6,080,000		$6,680,000

(ii). The amount of interest that is applicable to the assets that produce or are held for the production of allocable or exempt income within and without Louisiana is $18,633, determined as follows.

	Allocable Assets		Total Assets	
	01/01/06	12/31/06	01/01/06	12/31/06
Loan to 80% owned subsidiary	$310,000	$ 430,000	$ 310,000	$ 430,000
Cash (interest bearing checking)	110,000	220,000	110,000	220,000
Rental property (net)	80,000	75,000	80,000	75,000
Stocks - 80% owned subsidiary	100,000	100,000	100,000	100,000
Trademark asset	80,000	80,000	80,000	80,000
Other assets	0	0	5,400,000	5,775,000
Totals	$680,000	$ 905,000	$6,080,000	$ 6,680,000
1-1-06 totals		$ 680,000		$ 6,080,000
Totals		$1,585,000		$12,760,000
Average		792,500		6,380,000
Ratio				.12422
Interest expense attributed to total allocable or exempt assets (.12422 x $150,000)				18,633

(iii). The amount of interest expense that is applicable to the assets that produce or are held for the production of Louisiana allocable income is $2,668 determined as follows.

Louisiana Allocable Assets	
January 1, 2006 - Rental property	$ 80,000
**January 1, 2006 - Trademark asset	32,000
December 31, 2006 - Rental property	75,000
**December 31, 2006 - Trademark asset	40,000
Total	$227,000
Average Louisiana allocable assets	113,500
Average total allocable assets	792,500
Ratio of Louisiana average to total average allocable assets	.14322
Interest expense attributed to total allocable or exempt assets	18,633
Interest expense allocated to Louisiana allocable assets (.14322 x $18,633)	2,668

**For purposes of this example, it has been assumed that the ratio of trademark royalties for the prior month from Louisiana sources to total trademark royalties for the prior month is representative of the value of the asset attributable to Louisiana at balance sheet date. In December 2005, Louisiana trademark royalties were $480 and total trademark royalties were $1,200. In December 2006, Louisiana trademark royalties were $550 and total trademark royalties were $1,100.

(b). Example 2. Assume the same facts as Example 1 except that XYZ Corporation has elected under R.S.47:287.738(F)(2) to treat interest income from its 50 percent or more owned subsidiary as taxable allocable income. The ratio of the value of real and tangible personal property of the controlled corporation located in Louisiana to the value of such property within and without Louisiana is 10 percent for both the beginning and ending balance sheets. Therefore, 10 percent of the interest from the subsidiary is allocated to Louisiana and 10 percent of the receivable is attributed to Louisiana. In addition, the ratio of the subsidiary's income earned within Louisiana upon which Louisiana income tax has been paid to income earned everywhere of the subsidiary in the prior and current years is five percent. Therefore five percent of XYZ's investment in the subsidiary is attributed to Louisiana. Example 1 would change as follows:

(i). Total allocable and exempt income and Louisiana allocable income would be.

	Louisiana	Total
*Interest from 80% owned Subsidiary	$ 1,000	$10,000
**Interest (interest bearing checking)	-0-	5,000
**Dividends	-0-	5,000
Net rent income	10,000	10,000
Trademark royalty income	4,000	10,000
Total	$15,000	$40,000

(ii). The amount of interest that is applicable to the assets that produce or are held for the production of allocable or exempt income within and without Louisiana remains $18,633, calculated in the same manner. The only difference is that the loan to the subsidiary is now an allocable asset. The amount of interest expense that is applicable to the assets that produce or are held for the production of Louisiana allocable income or to the portion of the investment in a 50 percent or more owned subsidiary that has produced income that has been taxed by Louisiana is $3,656 determined as follows.

Louisiana Allocable Assets	
January 1, 2006 - Rental property	$ 80,000
January 1, 2006 - Trademark asset	32,000
**January 1, 2006 - Stock of subsidiary	5,000
January 1, 2006 - Loan to subsidiary	31,000
December 31, 2006 - Rental property	75,000
December 31, 2006 - Trademark asset	40,000
**December 31, 2006 - Stock of subsidiary	5,000
December 31, 2006 - Loan to subsidiary	43,000
Total	$311,000
Average Louisiana allocable assets	155,500
Average total allocable assets	792,500
Ratio of Louisiana average to total average allocable assets	.19621
Interest expense attributed to total allocable or exempt assets	18,633
Interest expense attributed to Louisiana (.19621 x $18,633)	3,656

* Taxpayer has elected to be taxed on certain interest income.
** Exempt but included only for convenience in computing the applicable expense.

2. Overhead Expense

a. Overhead Expense Attributable to Total Gross Allocable Income Derived from Rent of Immovable or Corporeal Movable Property or from Construction, Repair, or Other Similar Services

i. Overhead expense attributable to Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services shall be deducted from such income for the purposes of determining Louisiana net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying overhead expense attributed to total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services by the arithmetical average of two ratios, as follows:

(a). the ratio of the amount of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross allocable income from such sources;

(b). the ratio of the amount of direct cost incurred in the production of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of such income.

ii. Overhead expense attributable to total gross allocable income derived from rent of immovable or corporeal movable property or from construction, repair, or other similar services shall be deducted from such income for the purposes of determining total net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying total overhead expense by the arithmetical average of two ratios, as follows:

(a). the ratio of the amount of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross income derived from all sources;

(b). the ratio of the amount of direct cost incurred in the production of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of gross income from all sources.

iii. If the taxpayer has not maintained documents or records sufficient to compute the ratios required by this Subparagraph, the secretary shall, upon examination, determine the method by which to attribute overhead expense.

b. Overhead Expense Attributable to All Other Items of Gross Allocable Income. Overhead expense attributable to items of gross allocable income derived from sources within and without Louisiana, except gross allocable income from rent of immovable or corporeal movable property or from construction, repair or other similar services, may be determined by any reasonable method that clearly reflects net allocable income from such items of income.

3. Generally, direct and indirect expenses, other than interest expenses, attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses, other than interest expenses, sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be actual expenses attributed to such income.

C. This regulation shall not restrict the authority of the secretary to adjust the allocation of items of income and expense when the secretary determines that such adjustments are necessary in order to clearly reflect the taxpayer's Louisiana income.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:477 (March 2004), amended LR 31:

Family Impact Statement

The proposed amendment of LAC 61:I.1130, regarding the computation of net allocable income from Louisiana sources should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. The implementation of this proposed Rule will have no known or foreseeable effect on:

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

Any interested person may submit written data, views, arguments or comments regarding this proposed Rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments

must be submitted no later than 4:30 p.m., Thursday, October 27, 2005. A public hearing will be held on Friday, October 28, 2005, at 9 a.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Computation of Net Allocable Income from Louisiana Sources

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

The implementation of this proposed regulation, which updates the corporation income tax regulation relating to the allocation of items of income and expense, will have no impact on the agency's costs.

The implementation of this proposed regulation will have no impact upon any local governmental units.

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

Proposed regulatory changes related to updating corporate income tax regulations will have no effect on revenue collections of state or local governmental units.

The proposed regulations also implement portions of Act 401 of the 2005 Regular Legislative Session (HB 679). Act 401, in its entirety, is estimated to reduce State General Fund revenues by $4.8 million in FY 2006-07, $4.4 million in FY 2007-08, $3.9 million in FY 2008-09, and $3.5 million in FY 2009-10. The portions of these total fiscal effects associated with these specific proposed regulations implementing that Act is indeterminable.

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

Statutory changes related to Act 401 of the 2005 Regular Legislative Session will decrease the tax payments of affected businesses by an estimated $4.8 million in FY 2006-07. Tax reductions for affected businesses associated with these specific proposed regulations implementing that Act are indeterminable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges Secretary 0509#054	Robert E. Hosse Staff Director Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Donations to the Louisiana Military Family Assistance Fund
(LAC 61:III.1101)

Under the authority of R.S. 47:120.31, 297.5, 306.2, and 1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1101 to provide for the administration of Acts 2005, No. 151, which authorizes donations to the Louisiana Military Family Assistance Fund by designation on state income and sales tax returns.

Title 61
REVENUE AND TAXATION
Part III. Department of Revenue—Administrative Provisions and Miscellaneous
Chapter 11. Donations
§1101. Donations to the Louisiana Military Family Assistance Fund

A. Taxpayers filing individual or corporate income or sales and use tax returns may designate all or any portion of a refund, credit, or vendor's compensation as a donation, or may donate an amount greater than the tax or refund due to the Louisiana Military Family Assistance Fund (Fund) at the time that the tax returns are submitted to the Department of Revenue.

1. For corporate and individual income tax, returns for tax periods beginning on or after January 1, 2005, may include a designated donation.

2. For sales and use tax, returns for tax periods beginning on or after January 1, 2006, may include a designated donation.

B. To make a donation to the fund, the taxpayer must comply with all of the requirements for proper payment of the tax due including filing a correct return and paying all taxes, interest, and penalties due.

1. The taxpayer must properly designate the amount of the donation intended on the tax return form.

2. The taxpayer may donate all or a portion of any refund, credit, or vendor's compensation to the fund by designating the amount to be donated on the appropriate line of the return.

3. The taxpayer may contribute additional amounts to the fund by increasing the amount of the payment made for taxes, interest, and penalties due and designating the amount to be donated on the appropriate line of the return. Any additional donation must accompany the return. Donations not accompanying the filing of a return will be returned.

4. Once a taxpayer has made the election to donate, the taxpayer may not change the donation amount after the tax return has been filed.

C. Adjustments to Donation Amounts

1. Donation of Vendor's Compensation or Overpayments

a. If a taxpayer elects to donate all or any portion of an expected overpayment and the amount of the overpayment is reduced because of return errors or disallowance of vendor's compensation, the donation amount will be reduced accordingly.

b. If a taxpayer elects to donate all or any portion of their vendor's compensation or an expected overpayment and the taxpayer has other outstanding liabilities for other taxes or tax periods, the overpayment will first be applied to the outstanding tax liabilities and the donation amount will be reduced accordingly.

c. If a taxpayer elects to donate all or any portion of their vendor's compensation or an expected overpayment and the taxpayer is subject to other offsets, garnishments, liens, or seizures, the overpayment will first be applied to those legal responsibilities and the donation amount will be reduced accordingly.

2. Additional Donations. If a taxpayer elects to contribute additional amounts by increasing the amount of the tax return payment and the amount due on the return is increased because of return errors or disallowance of vendor's compensation or the taxpayer fails to pay in full the amount shown due on the return, the taxes due will not be considered properly paid as required by §1101.B and the donation amount will be reduced accordingly.

3. Taxpayers will be notified of any donation adjustments.

4. The department will not seek to collect amounts designated as a donation by the taxpayer if the donation amount is adjusted as provided by §1101.C.1-2.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:120.31, 297.5, 306.2 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 31:

Family Impact Statement

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will improve the stability of needy military families who receive assistance from the Louisiana Military Family Assistance Board.

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 a positive effect on family earnings and family budget of military families who receive assistance from the Louisiana Military Family Assistance Board.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Linda Denney, Senior Policy Consultant, Policy Services Division, Department of Revenue, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Wednesday, October 26, 2005. A public hearing will be held on Thursday, October 27, 2005, at 1 p.m. in the Griffon Room on the First Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Donations to the Louisiana Military Family Assistance Fund

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

Acts 2005, No. 151 enacted R.S. 47:120.31, 297.5, and 306.2, which allow taxpayers filing individual or corporate income or sales and use tax returns to donate all or any portion of a refund, credit, or vendor's compensation, or make an additional donation to the Louisiana Military Family Assistance Fund at the time that the tax returns are filed with the Department of Revenue.

Implementation of this proposed rule will result in first-year costs of $55,000 for programming the Department's DELTA tax system to account for the monies donated to the fund and adding scanning capabilities for data capture of the five new lines on the sales tax return and the one new line on the income tax returns. Subsequent years' administrative costs should be minimal.

There will be no implementation costs for local governmental units.

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

This proposed rule, which allows taxpayers filing individual or corporate income or sales and use tax returns to donate all or any portion of a refund, credit, or vendor's compensation, or make an additional donation to the Louisiana Military Family Assistance Fund at the time that the tax returns are filed, will have no effect on the revenue collections of state or local governmental units.

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

This proposed rule will provide financial assistance to qualifying military family members who make need-based claims that are approved by the Louisiana Military Family Assistance Board as provided by R.S. 46:122.

This proposed rule will affect taxpayer receipts or income to the extent that taxpayers elect to donate to the Louisiana Military Family Assistance Fund.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no effect on competition or employment.

Cynthia Bridges	Robert E. Hosse
Secretary	Staff Director
0509#028	Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services
Office of Management and Finance

Substance Abuse Testing of Employees (LAC 67:I.101-119)

The Department of Social Services, Office of the Secretary, proposes to amend Title 67, Part I of the Louisiana Administrative Code, Subpart 1 General Administration.

Title 67
SOCIAL SERVICES
Part I. Office of the Secretary
Subpart 1. General Administration
Chapter 1. Substance Abuse Testing
§101. Introduction and Purpose

A. …

B. The state of Louisiana has a long-standing commitment to working toward an alcohol-free, drug-free workplace. In order to curb the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the Governor of the State of Louisiana issued Executive Orders Number KBB 2005-08 and KBB 2005-11 providing for the promulgation by executive agencies of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees, pursuant to R.S. 49:1001 et seq.

C. The Department of Social Services fully supports these efforts and is committed to an alcohol-free, drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§105. Definitions

* * *

Safety-Sensitive or Security-Sensitive a position determined by the appointing authority to contain duties of such nature that the compelling state interest to keep the incumbent drug-free outweighs the employee's privacy interests. Executive Orders Number KBB 2005-08 and KBB 2005-11 set forth the following non-exclusive list of examples of safety-sensitive and/or security-sensitive positions in state government:

1. - 8. …

Under the Influence for the purposes of this policy, alcohol, a drug, chemical substance, or the combination of alcohol, a drug, chemical substance that affects an employee in any detectable manner. The symptoms or influence are not confined to that consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by a professional opinion or a scientifically valid test.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§107. DSS Drug-free Workplace Policy

A. It shall be the policy of DSS to maintain a drug-free workplace and a workforce free of substance abuse (see DSS Policy 4-08). Employees are prohibited from reporting for work, performing work, or otherwise being on any duty status for DSS with the presence in their bodies of alcohol, illegal drugs, controlled substances, or designer (synthetic) drugs at or above the initial testing levels and confirmatory testing levels as established in the contract between the State of Louisiana and the official provider of drug testing services. Employees are further prohibited from illegal use, possession, dispensation, distribution, manufacture, or sale of controlled substances, designer (synthetic) drugs, and illegal drugs at the work site and while on official state business, on duty or on call for duty.

B. To assure maintenance of a drug-free workforce, it shall be the policy of DSS to implement a program of drug testing in accordance with Executive Orders Number KBB 2005-08 and KBB 2005-11, R.S. 49:1001 et seq., and all other applicable federal and state laws, as set forth below.

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§109. Conditions Requiring Drug Tests

A. DSS shall require alcohol/drug testing under the following conditions.

1. Reasonable Suspicion: Any employee shall be required to submit to an alcohol/drug test if there is a reasonable suspicion (as defined in this policy) that the employee is using illegal drugs or is under the influence of alcohol while on duty. At least two supervisors/managers must concur there is reasonable suspicion before an employee is required to submit to an alcohol/drug test. Supervisors shall decide who will drive the employee to the testing site.

2. Post-Accident: Each employee involved in an accident that occurs during the course and scope of employment shall be required to submit to an alcohol/drug test if the accident:

a. involves circumstances leading to a reasonable suspicion of the employee's alcohol/drug use;

b. results in serious injury or a fatality; or

c …

3. Rehabilitation Monitoring: Any employee who is participating in a substance abuse after-treatment program or who has a rehabilitation agreement with the agency shall be required to submit to periodic drug testing.

4. Pre-Employment: A prospective employee who is given a conditional offer of employment shall sign and be given a copy of the DSS Conditional Offer of Employment Agreement form. Each prospective employee shall be required to submit to drug screening at the time and place designated by the appointing authority or designee following a conditional job offer contingent upon a negative drug-testing result. A prospective employee who tests positive for the presence of drugs in the initial screening or who fails to cooperate in the testing shall be eliminated from consideration for employment. Employees transferring to DSS from other state agencies without a break in service are exempt from pre-employment testing.

5. …

6. Safety-Sensitive and Security-Sensitive Positions Random Resting. Every employee in a safety-sensitive or security-sensitive position shall be required to submit to alcohol/drug testing as required by the appointing authority, who shall periodically call for a sample of such employees, selected at random by a computer-generated

random selection process, and require them to report for testing. All such testing shall, if practicable, occur during the selected employee's work schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§111. Procedure

A. Alcohol/drug testing pursuant to this policy shall be conducted for the presence of any illegal drugs including, but not limited to, cannabinoids (marijuana metabolites), cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines in accordance with the provisions of R.S. 49:1001 et seq. DSS reserves the right to test employees for the presence of any alcohol, illegal drugs or controlled substance when there is a reasonable suspicion to do so.

B. The human resources director of each Office shall be involved in any determination that one of the above-named conditions requiring alcohol/drug-testing exists. Upon such determination, the appointing authority or designee for each Office shall notify the supervisor of the employee to be tested, who shall immediately notify the employee where and when to report for the testing.

C. - C.4. …

5. The laboratory shall use a concentration cut-off of 0.08 or more for the initial positive finding in testing for alcohol.

6. All positives reported by the laboratory must be confirmed by gas/chromatography/mass spectrometry.

7. All confirmed positive results of alcohol/drug testing shall be reported by the laboratory to a qualified medical review officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§113. Confidentiality

A. All information, interviews, reports, statements, memoranda, and/or test results received by DSS through its alcohol/drug testing program are confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. These records will be kept in a locked confidential file just as any other medical records are retained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§115. Responsibilities

A. The Secretary of DSS is responsible for the overall compliance with this policy and shall submit to the Office of the Governor, through the Commissioner of Administration, a report on this policy and drug testing program; describing the process, the number of employees affected, the categories of testing being conducted, the associated costs of testing, and the effectiveness of the program by December 1 of each year.

B. The appointing authority or designee is responsible for administering the alcohol/drug testing program; determining when drug testing is appropriate; receiving, acting on, and holding confidential all information received from the testing services provider and from the medical review officer; and collecting appropriate information necessary to agency defense in the event of legal challenge.

C. All supervisory personnel are responsible for assuring that each employee under their supervision is aware of and understands this policy, and signs a receipt form acknowledging the policy. Each employee must be given a copy of the receipt form in the new hire package.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§117. Violation of the Policy

A. Positive Test Result. All initial screening tests with positive results must be confirmed by a second more accurate test with the results reviewed by a medical review officer. Any breath test resulting in 0.08 alcohol concentration will be considered an initial positive result. In these cases, the confirmation test will be performed within 30 minutes, but not less than 15 minutes, of completion of the screening test. Urine samples will be tested using the split sample method, with the confirmation test performed on the second half of the sample in the event of an initial positive result. Any employee reported with a confirmed positive test shall either be suspended with pay pending investigation or shall have the safety/security sensitive duties removed from his/her position pending preparation and approval of disciplinary action up to and including dismissal, as set forth in DSS Policy 4-07. At a minimum the following actions will be taken in the instance of a first confirmed positive test.

1. The employee shall be subject to disciplinary action as determined by the appointing authority.

2. …

3. The employee shall be screened on a periodic basis for not less than 12 months nor more than 60 months. Follow-up testing, return to duty testing, counseling and any other recommended treatment will be at the cost of the employee and not the department. Post accident or return to duty tests which are positive will result in the employee's dismissal.

B. Refusal to Test

1. Any employee refusing to submit to a breath test for the presence of alcohol or a urine test for the presence of drugs will be subject to the consequences of a positive test. A refusal is defined as a verbal refusal, abusive language to the supervisor or personnel performing the test, or tampering of any sample, container, equipment or documentation of the sampling process. If a test is determined to be invalid, it is not considered a refusal and no disciplinary action will be taken. Inability to perform the testing procedures must be documented by a medical physician and recorded in the employee's personnel file.

2. If an employee alleges that, because of medical reasons, he/she is unable to provide a sufficient amount of

breath to permit a valid breath test, the Breath Alcohol Technician (BAT) will instruct the employee to try a second time to provide an adequate amount of breath. If an employee is unwilling to submit to the test, then the results of the test will be subject to the consequences of a positive test. If an employee is unable to provide a sufficient quantity of urine, the collector will discard the insufficient specimen and instruct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the employee has provided a new urine specimen. If the employee remains unable to provide a sufficient specimen, the collector must discard the insufficient specimen, discontinue testing and notify the Agency Human Resources Director or his/her designee of his/her actions. In these instances, the Agency Human Resources Director or his/her designee shall inform the appointing authority immediately. The appointing authority shall direct the employee to have a medical evaluation, within five working days (at the agency's expense) conducted by an agency selected licensed physician with expertise in the medical issues surrounding a failure to provide a sufficient specimen. The physician will provide to the appointing authority, a report of his/her conclusions as to whether the employee's inability to provide a sufficient specimen is genuine or constitutes a refusal to test. If the conclusion of refusal to test is reached, it will be subject to the consequences of a positive test.

C. Reasonable Suspicion of Adulterated/Substituted Sample. A specimen temperature that measures outside the range of 90 to 100 degrees Fahrenheit constitutes a reason to believe that an employee has adulterated or substituted the specimen. The collector must immediately conduct a new collection using direct observation procedures.

D. Challenging Test Results. If a current or prospective employee receives a confirmed positive test result, he/she may challenge the test results within 72 hours of actual notification, with the understanding that he/she may be placed on suspension pending investigation, until the challenge is resolved. A written explanation of the reason for the positive test result may be submitted to the medical review officer. Employees who are on legally prescribed and obtained medication for a documented illness, injury or ailment will be eligible for continued employment upon receiving clearance from the medical review officer.

E. Other Violations. Each violation and alleged violation of this policy will be handled on an individual basis, taking into account all data, including the risk to self, fellow employees, clients, and the general public.

F. Failure to comply with provision of the policy, including but not limited to, the following, will be grounds for disciplinary action:

1. - 4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§119. Attachment A C Safety-Sensitive and Security-Sensitive Positions Within DSS

A. A candidate for one of the following positions will be required to pass a drug test before being placed in such a position, whether through appointment or promotion and employees who occupy these positions will be subject to random alcohol/drug testing.

Louisiana Rehabilitation Services	Administrative Specialist 3 (Position 060871) Client Services Worker Rehabilitation Aide
Office of Family Support	Social Services Analyst 1 & 2 (All positions in Support Enforcement) Social Services Analyst Supervisor (All positions in Support Enforcement) Support Enforcement District Manager 1 & 2 Support Enforcement Regional Administrator
Office of Community Services	Administrative Coordinator 3 (Positions in Field Services – Parish and Regional Offices) Administrator Coordinator 2 (Positions in Field Services – Parish and Regional Offices) Child Welfare Services Assistant Trainee Child Welfare Services Assistant Child Welfare Counselor/Adoption Child Welfare Specialist 1 Child Welfare Specialist 2 Child Welfare Specialist 3 Child Welfare Specialist 4 Child Welfare Specialist Trainee Social Service Counselor 1 Social Service Counselor 2
Office of the Secretary/Office of Management and Finance	Accountant 3 (178446) Administrative Coordinator 1 (002112, 002913) Administrative Coordinator 2 (001979) Auditor Supervisor (124684) Licensing Specialist 1 DSS Licensing Specialist 2 DSS

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1148 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will have no effect on the stability of the family.

2. What effect will this have on the authority and right of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will have no effect on family earnings or budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this Rule is strictly an agency function.

Interested persons may submit written comments by October 24, 2005, to Terri P. Ricks, Undersecretary, Office

of the Secretary, Post Office Box 3776, Baton Rouge, LA, 70821-3776. She is responsible for responding to inquiries regarding this proposed Rule.

Ann S. Williamson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Substance Abuse Testing of Employees

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

Implementation of this rule will result in additional costs associated with testing for alcohol use when an employee is under reasonable suspicion for being under the influence of alcohol while on duty. The costs are based on the assumption of testing an average of 53 employees per year, or 1 percent of DSS staff, suspected of alcohol use while on duty at a rate of $12 per breath test. The cost is estimated at $636 for the annual testing and $374 for the publication in the *Louisiana Register*.

The minimal cost of publishing the rule, printing policy changes is expected to be approximately $374 and is routinely included in the agency's annual budget.

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

Implementation of this rule will have no effect on state or local revenue collections.

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

The rule will result in no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment in the public or private sectors.

Terri R. Ricks	H. Gordon Monk
Undersecretary	Legislative Fiscal Officer
0509#033	Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry
Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 5-6, 2005, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates:	September 2, 2005
Re-Take Candidates:	September 23, 2005
Reciprocity Candidates:	November 11, 2005

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 2, 2005. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0509#007

POTPOURRI

Department of Environmental Quality
Office of the Secretary

Notice of Public Hearing
Substantive Changes to Proposed Rule AQ246L
Nonattainment New Source Review; Prevention of Significant Deterioration – Louisiana Revisions
(LAC 33:III.504 and 509)(AQ246LS)

Under the authority of the Louisiana 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 the department is seeking to incorporate substantive changes to the proposed amendments to the Air Quality regulations, LAC 33:III.504 and 509 (Log #AQ246LS), which were originally noticed as AQ246L in the June 20, 2005, issue of the *Louisiana Register*. This rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP).

The department has made substantive changes to address comments received during the public comment period of proposed rule AQ246L. Louisiana's June 20, 2005, AQ246L proposal eliminated "malfunctions" from the definitions of *baseline actual emissions* and *projected actual emissions*. Because the state's proposed regulation did not mirror the corresponding federal requirement, the department must demonstrate that such provisions are at least as stringent as the federal rule. With these substantive changes, "malfunctions" will be reinstated where previously omitted, but defined. The federal rule does not define "malfunction." AQ246LS establishes that for purposes of LAC 33:III.504 and 509, malfunctions shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. The addition of a definition which clarifies that the only "malfunction" emissions to be excluded are those not compliant with federal or state standards ensures that the state rule is at least as stringent as the federal rule.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from substantively changed language is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

A public hearing on the substantive changes and the SIP revision will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

Written comments regarding the substantive changes must be received no later than October 25, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Persons commenting should reference AQ246LS in their correspondence. Copies of this proposed regulation with substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy.

This regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

[Note: These changes supersede text in AQ246FS.]

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. - D.9.a.iii. … [See AQ246FS]

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the

information set out in Subparagraph D.9.a of this Section to the administrative authority.

9.c. - 10. … [See AQ246FS]

11. For a project originally determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that the project has resulted or will now result in a significant net emissions increase, the owner or operator must either:

a. request that the administrative authority limit the potential to emit of the affected emissions units (including those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result; or

b. submit a revised permit application within 180 days requesting that the original project be deemed a major modification.

E. - J.3.a. … [See AQ246FS]

b. calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also authorized emissions associated with startup, shutdown, and malfunction;

3.c. - 7.c. … [See AQ246FS]

d. a requirement that emission calculations for compliance purposes include emissions associated with startup, shutdown, and malfunction;

7.e. - 15.b. … [See AQ246FS]

K. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

* * *

[See AQ246FS]

Baseline Actual Emissions the rate of emissions, in tons per year, of a regulated pollutant, determined as follows.

a. … [See AQ246FS]

i. The average rate shall include fugitive emissions to the extent quantifiable, and authorized emissions associated with startups, shutdowns, and malfunctions.

a.ii. - b. … [See AQ246FS]

i. The average rate shall include fugitive emissions to the extent quantifiable, and authorized emissions associated with startups, shutdowns, and malfunctions.

b.ii. - d. … [See AQ246FS]

* * *

[See AQ246FS]

Clean Coal Technology repealed from AQ246F.

Clean Coal Technology Demonstration Project repealed from AQ246F.

* * *

[See AQ246FS]

Major Modification

a. - c.vii. … [See AQ246FS]

viii. Reserved.

d. … [See AQ246FS]

* * *

[See AQ246FS]

Malfunctions for purposes of this Section, *malfunctions* shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards.

* * *

[See AQ246FS]

Projected Actual Emissions the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the *projected actual emissions* before beginning actual construction, the owner or operator of the major stationary source:

a. … [See AQ246FS]

b. shall include fugitive emissions to the extent quantifiable, and authorized emissions associated with startups, shutdowns, and malfunctions; and

c. - d. … [See AQ246FS]

* * *

[See AQ246FS]

Temporary Clean Coal Technology Demonstration Project repealed from AQ246F.

* * *

[See AQ246FS]

L. … [See AQ246FS]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

§509. Prevention of Significant Deterioration

A. - A.6. … [See AQ246FS]

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

* * *

[See AQ246FS]

Baseline Actual Emissions the rate of emissions, in tons per year, of a regulated NSR pollutant, determined as follows.

a. … [See AQ246FS]

i. The average rate shall include fugitive emissions to the extent quantifiable, and authorized emissions associated with startups, shutdowns, and malfunctions.

a.ii. - b. … [See AQ246FS]

i. The average rate shall include fugitive emissions to the extent quantifiable, and authorized emissions associated with startups, shutdowns, and malfunctions.

b.ii. - d. … [See AQ246FS]

* * *

[See AQ246FS]

Clean Coal Technology repealed from AQ246F.

Clean Coal Technology Demonstration Project repealed from AQ246F.

* * *

[See AQ246FS]

Major Modification

a. - c.vii. … [See AQ246FS]

viii. Reserved.

d. … [See AQ246FS]

* * *

[See AQ246FS]

Malfunctions for purposes of this Section, *malfunctions* shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards.

* * *

[See AQ246FS]

Projected Actual Emissions the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the *projected actual emissions* before beginning actual construction, the owner or operator of the major stationary source:

a. … [See AQ246FS]

b. shall include fugitive emissions to the extent quantifiable, and authorized emissions associated with startups, shutdowns, and malfunctions; and

c. - d. … [See AQ246FS]

Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit repealed from AQ246F.

* * *

[See AQ246FS]

Repowering repealed from AQ246F.

* * *

[See AQ246FS]

Temporary Clean Coal Technology Demonstration Project repealed from AQ246F.

C. - R.6.a.iii. … [See AQ246FS]

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Subparagraph R.6.a of this Section to the administrative authority.

6.c. - 7. … [See AQ246FS]

8. Revisions to Projected Actual Emissions. For a project originally evaluated in accordance with Paragraph A.3 of this Section and determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that the project has resulted or will now result in a significant net emissions increase, the owner or operator shall:

a. request that the administrative authority limit the potential to emit of the affected emissions units (including those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result; or

b. submit a revised PSD application within 180 days requesting that the original project be deemed a major modification.

S. - AA.3.a. … [See AQ246FS]

b. calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also authorized emissions associated with startup, shutdown, and malfunction;

3.c. - 15.b. … [See AQ246FS]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

Herman Robinson, CPM
Executive Counsel

0509#052

POTPOURRI

Department of Environmental Quality
Office of the Secretary

Solicitation of Comments on Revision of Comprehensive Toxic Air Pollutant Emission Control Program
(LAC 33:III.Chapter 51)

The Department of Environmental Quality is proposing to revise the Louisiana Air Toxics regulations in LAC 33:III.Chapter 51, Subchapter A. LAC 33:III.Chapter 51, Subchapter A was originally promulgated in December 1991 pursuant to R.S. 30:2060. There have been several revisions to the regulations since; however, the department is considering a comprehensive review of Subchapter A. Revisions will be proposed to revise dated language in the regulations and update the Louisiana Ambient Air Quality Standards to ensure protection of human health and the environment by applying the most recent and best scientific data available.

The department seeks written comments from interested parties for consideration as we develop rule revisions for proposal. The comments may suggest areas or topics for revision or propose revisions to the regulations. Comments are due no later than 4:30 p.m., November 20, 2005, and should be submitted to James Orgeron, Office of

Environmental Assessment, Air Quality Planning Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by e-mail to james.orgeron@la.gov. After the comment period has ended, a stakeholders meeting will be scheduled and held.

Herman Robinson, CPM
Executive Counsel

0509#051

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Notice of Public Hearing
Substantive Changes to Proposed Rule AQ246F
Nonattainment New Source Review;
Prevention of Significant Deterioration
(LAC 33:III.504 and 509)(AQ246FS)

Under the authority of the Louisiana 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 the department is seeking to incorporate substantive changes to the proposed amendments to the Air Quality regulations, LAC 33:III.504 and 509 (Log #AQ246FS), which were originally noticed as AQ246F in the June 20, 2005, issue of the *Louisiana Register*. This Rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP).

The department has made substantive changes to address comments received during the public comment period of proposed Rule AQ246F. On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit vacated the Clean Unit and Pollution Control Project portions of EPA's December 31, 2002, NSR Reform rule (*New York et al. v. U.S. EPA*, No. 02-1387). These provisions were removed from AQ246F. Several other unrelated changes were also made in response to public comments.

A strikeout/underline/shaded version of the proposed Rule that distinguishes original proposed language from substantively changed language is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

A public hearing on the substantive changes and the SIP revision will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

Written comments regarding the substantive changes must be received no later than October 25, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Persons commenting should reference AQ246FS in their correspondence. Copies of this proposed regulation with substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy.

This regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. Applicability. The provisions of this Section apply to the construction of any new *major stationary source* or to any *major modification* at a major stationary source, as defined herein, provided such source or modification will be located within a nonattainment area so designated in accordance with Section 107 of the federal Clean Air Act, and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment. If any provision of this Section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

1. For an area that is designated incomplete data, transitional nonattainment, marginal, moderate, serious, or severe nonattainment for the ozone national ambient air quality standard, VOC and NO_X are the regulated pollutants under this Section. VOC and NO_X emissions shall not be aggregated for purposes of determining major stationary source status and significant net emissions increases.

2. …

3. Except as specified in Paragraph A.5 of this Section, the emissions increase that would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L.Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

a. Actual-to-Projected-Actual Applicability Test for Projects That Only Involve Existing Emissions Units. The emissions increase of a regulated pollutant shall be calculated by summing the difference between the *projected actual emissions*, as defined in Subsection K of this Section, and the *baseline actual emissions*, as defined in Subsection K of this Section, specifically Subparagraphs a and b of the definition, for each existing emissions unit.

b. Actual-to-Potential Test for Projects That Only Involve Construction of New Emissions Units. The emissions increase of a regulated pollutant shall be calculated by summing the difference between the *potential to emit*, as defined in Subsection K of this Section, from each new emissions unit following completion of the project and the *baseline actual emissions*, as defined in Subsection K of this Section, specifically Subparagraph c of the definition, of these units before the project.

c. Reserved.

d. Hybrid Test for Projects That Involve Multiple Types of Emissions Units. The emissions increase of a regulated pollutant shall be calculated using the methods specified in Subparagraphs A.3.a-b of this Section, as applicable, with respect to each emissions unit, for each type of emissions unit.

4. The net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L.Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. Reserved.

6. For any major stationary source with a plantwide applicability limit (PAL) for a regulated pollutant, the owner or operator shall comply with Subsection J of this Section.

7. For applications deemed administratively complete in accordance with LAC 33:III.519.A prior to December 20, 2001, the requirements of this Section shall not apply to NO_X increases; furthermore, the 1.40 to 1 VOC internal offset ratio for serious ozone nonattainment areas shall not apply. In such situations, a 1.30 to 1 internal offset ratio shall apply to VOC if lowest achievable emission rate (LAER) is not utilized.

8. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, the provisions of this Section governing serious ozone nonattainment areas shall apply to VOC and NO_X increases. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after June 23, 2003, the provisions of this Section governing severe ozone nonattainment areas shall apply to VOC and NO_X increases.

B. - D.3. …

4. For any new major stationary source or major modification in accordance with this Section, it shall be assured that the total tonnage of the emissions increase that would result from the proposed construction or modification shall be offset by an equal or greater reduction as applicable, in the actual emissions of the regulated pollutant from the same or other sources in accordance with Paragraph F.9 of this Section. The total tonnage of increased emissions, in tons per year, shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. A higher level of offset reduction may be required in order to demonstrate that a net air quality benefit will occur.

5. - 8.d. …

9. For existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use, for the purpose of calculating projected actual emissions, the method specified in Subparagraphs K.*Projected Actual Emissions*.a-c of this Section, the following shall apply.

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

i. a description of the project;

ii. identification of the emissions units whose emissions of a regulated pollutant could be affected by the project; and

iii. a description of the applicability test used to determine that the project is not a major modification for any regulated pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Subparagraph K.*Projected Actual Emissions*.c of this Section (i.e., demand growth) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Subparagraph D.9.a of this Section to the administrative authority. Nothing in this Subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the administrative authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Clause D.9.a.ii of this Section, and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority within 60 days after the end of each year during which records must be generated under Subparagraph D.9.c of this Section setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority if the annual emissions, in tons per year, from the project identified in Subparagraph D.9.a of this Section, exceed the baseline actual emissions, as documented and maintained in accordance with Clause D.9.a.iii of this Section, by a *significant* amount, as defined in Subsection K of this Section, for that regulated pollutant, and if such emissions differ from the preconstruction projection as documented and maintained in accordance with Clause D.9.a.iii of this Section. Such report shall be submitted to the administrative authority within 60 days after the end of such year. The report shall contain the following:

i. the name, address, and telephone number of the major stationary source;

ii. the annual emissions as calculated in accordance with Subparagraph D.9.c of this Section; and

iii. any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

10. The owner or operator of the source shall make the information required to be documented and maintained in

accordance with Paragraph D.9 of this Section available for review upon a request for inspection by the administrative authority or the general public in accordance with the requirements contained in 40 CFR 70.4(b)(3)(viii).

E. - F.10. …

11. Reserved.

12. Reserved.

G. Reserved.

H. Reserved.

I. Reserved.

J. Actuals PALs

1. Applicability

a. The administrative authority may approve the use of an actuals PAL for any existing major stationary source, except as provided in Subparagraph J.1.b of this Section, if the PAL meets the requirements of this Subsection. The term "PAL" shall mean "actuals PAL" throughout this Subsection.

b. The administrative authority shall not allow an actuals PAL for VOC or NO_X for any major stationary source located in an extreme ozone nonattainment area.

c. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Subsection, and complies with the PAL permit:

i. is not a major modification for the PAL pollutant;

ii. does not have to be approved through this Section; and

iii. is not subject to the provisions in Paragraph B.1 of this Section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

d. Except as provided under Clause J.1.c.iii of this Section, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

2. Definitions. For purposes of this Subsection, the terms below shall have the meaning herein as follows. When a term is not defined in this Paragraph, it shall have the meaning given in Subsection K of this Section or in the Clean Air Act.

a. *Actuals PAL* a PAL based on the *baseline actual emissions*, as defined in Subsection K of this Section, of all *emissions units*, as defined in Subsection K of this Section, at the source that emit or have the potential to emit the PAL pollutant.

b. *Allowable Emissions* as defined in Subsection K of this Section, except with the following modifications.

i. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

ii. An emissions unit's potential to emit shall be determined using the definition in Subsection K of this Section, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

c. *Major Emissions Unit*

i. any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

ii. any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the appropriate major stationary source threshold value listed in Subsection L.Table 1 of this Section for the PAL pollutant.

d. *Plantwide Applicability Limitation (PAL)* an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subsection.

e. *PAL Effective Date* generally the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

f. *PAL Effective Period* the period beginning with the PAL effective date and ending 10 years later.

g. *PAL Major Modification* notwithstanding the definitions for *major modification* and *net emissions increase* in Subsection K of this Section, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

h. *PAL Permit*—the major NSR permit, the minor NSR permit, or the state operating permit under a program that is approved into the State Implementation Plan or the Title V permit issued by the administrative authority that establishes a PAL for a major stationary source.

i. *PAL Pollutant*—the pollutant for which a PAL is established at a major stationary source.

j. *Significant Emissions Unit*—an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the *significant* level, as defined in Subsection K of this Section or in the Clean Air Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a *major emissions unit* as defined in Subparagraph J.2.c of this Section.

k. *Small Emissions Unit* an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the *significant* level for that PAL pollutant, as defined in Subsection K of this Section or in the Clean Air Act, whichever is lower.

3. Permit Application Requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the administrative authority for approval:

a. a list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

b. calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction;

c. the calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subparagraph J.13.a of this Section.

4. General Requirements for Establishing PALs

a. The administrative authority may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met.

i. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

ii. The PAL shall be established in a PAL permit that meets the public participation requirements in Paragraph J.5 of this Section.

iii. The PAL permit shall contain all the requirements of Paragraph J.7 of this Section.

iv. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

v. Each PAL shall regulate emissions of only one pollutant.

vi. Each PAL shall have a PAL effective period of 10 years.

vii. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Paragraphs J.12-14 of this Section for each emissions unit under the PAL through the PAL effective period.

b. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under Subsection F of this Section unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. Public Participation Requirement for PALs. Procedures to establish, renew, or increase PALs for existing major stationary sources shall be the same as the procedures for permit issuance in accordance with LAC 33:III.519. These include the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comments. The administrative authority shall address all material comments before taking final action on the permit.

6. Setting the 10-Year Actuals PAL Level

a. Except as provided in Subparagraph J.6.b of this Section, the actuals PAL level for a major stationary source shall be established as the sum of the *baseline actual emissions*, as defined in Subsection K of this Section, of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable *significant* level for the PAL pollutant, as defined in Subsection K of this Section or in the Clean Air Act, whichever is lower. When establishing the actuals PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The administrative authority shall specify a reduced PAL level (in tons/yr) in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the administrative authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit.

b. For newly-constructed units, which do not include modifications to existing units, on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Subparagraph J.6.a of this Section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

7. Contents of the PAL Permit. The PAL permit shall contain, at a minimum, the following information:

a. the PAL pollutant and the applicable source-wide emission limitation in tons per year;

b. the PAL permit effective date and the expiration date of the PAL (PAL effective period);

c. specification that if a major stationary source owner or operator applies to renew a PAL in accordance with Paragraph J.10 of this Section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period, but shall remain in effect until a revised PAL permit is issued by the administrative authority;

d. a requirement that emission calculations for compliance purposes include emissions associated with startup, shutdown, and malfunction;

e. a requirement that, once the PAL expires, the major stationary source is subject to the requirements of Paragraph J.9 of this Section;

f. the calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subparagraph J.13.a of this Section;

g. a requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Paragraph J.12 of this Section;

h. a requirement to retain the records required under Paragraph J.13 of this Section on site. Such records may be retained in an electronic format;

i. a requirement to submit the reports required under Paragraph J.14 of this Section by the required deadlines;

j. any other requirements that the administrative authority deems necessary to implement and enforce the PAL.

8. PAL Effective Period and Reopening of the PAL Permit

a. PAL Effective Period. The administrative authority shall specify a PAL effective period of 10 years.

b. Reopening of the PAL Permit

i. During the PAL effective period, the administrative authority shall reopen the PAL permit to:

(a). correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(b). reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under Subsection F of this Section;

(c). revise the PAL to reflect an increase in the PAL as provided under Paragraph J.11 of this Section.

ii. The administrative authority has the discretion to reopen the PAL permit in order to:

(a). reduce the PAL to reflect newly applicable federal requirements [e.g., new source performance standards (NSPS)] with compliance dates after the PAL effective date;

(b). reduce the PAL consistent with any other requirement that is enforceable as a practical matter, and that the state may impose on the major stationary source;

(c). reduce the PAL if the administrative authority determines that a reduction is necessary to avoid causing or contributing to a national ambient air quality standard (NAAQS) or PSD increment violation, or to an adverse impact on an air quality-related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

iii. Except for the permit reopening in Subclause J.8.b.i.(a) of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Paragraph J.5 of this Section.

9. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Paragraph J.10 of this Section shall expire at the end of the PAL effective period, and the following requirements shall apply.

a. Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

i. Within the time frame specified for PAL renewals in Subparagraph J.10.b of this Section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as decided by the administrative authority, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Subparagraph J.10.e of this Section, such distribution shall be made as if the PAL had been adjusted.

ii. The administrative authority shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the administrative authority determines is appropriate.

b. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The administrative authority may approve the use of monitoring systems (source testing, emission factors, etc.) other than continuous emissions monitoring systems (CEMS), continuous emissions rate monitoring systems (CERMS), predictive emissions monitoring systems (PEMS), or continuous parameter monitoring systems (CPMS) to demonstrate compliance with the allowable emission limitation.

c. Until the administrative authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Clause J.9.a.i of this Section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

d. Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of *major modification* in Subsection K of this Section.

e. The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period, except for those emission limitations that had been established in accordance with Paragraph B.1 of this Section, but were eliminated by the PAL in accordance with the provisions in Clause J.1.c.iii of this Section.

10. Renewal of a PAL

a. The administrative authority shall follow the procedures specified in Paragraph J.5 of this Section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the administrative authority.

b. Application Deadline. A major stationary source owner or operator shall submit a timely application to the administrative authority to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

c. Application Requirements. The application to renew a PAL permit shall contain the following information:

i. the information required in Subparagraphs J.3.a-c of this Section;

ii. a proposed PAL level;

iii. the sum of the potential to emit of all emissions units under the PAL, with supporting documentation;

iv. any other information the owner or operator wishes the administrative authority to consider in determining the appropriate level for renewing the PAL.

d. PAL Adjustment. In determining whether and how to adjust the PAL, the administrative authority shall consider the options outlined in Clauses J.10.d.i-ii of this Section. However, in no case may any such adjustment fail to comply with Clause J.10.d.iii of this Section.

i. If the emissions level calculated in accordance with Paragraph J.6 of this Section is equal to or greater than 80 percent of the PAL level, the administrative authority may renew the PAL at the same level without considering the factors set forth in Clause J.10.d.ii of this Section.

ii. The administrative authority may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the administrative authority in his or her written rationale.

iii. Notwithstanding Clauses J.10.d.i-ii of this Section:

(a). if the potential to emit of the major stationary source is less than the PAL, the administrative authority shall adjust the PAL to a level no greater than the potential to emit of the source; and

(b). the administrative authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Paragraph J.11 of this Section regarding increasing a PAL.

e. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the administrative authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

11. Increasing a PAL during the PAL Effective Period

a. The administrative authority may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

i. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

ii. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units, exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

iii. The owner or operator shall obtain a major NSR permit for all emissions units identified in Clause J.11.a.i of this Section, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process (e.g., LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

iv. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

b. The administrative authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls as determined in accordance with Clause J.11.a.ii of this Section, plus the sum of the baseline actual emissions of the small emissions units.

c. The PAL permit shall be revised to reflect the increased PAL level in accordance with the public notice requirements of Paragraph J.5 of this Section.

12. Monitoring Requirements for PALs

a. General Requirements

i. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

ii. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Clauses J.12.b.i-iv of this Section and must be approved by the administrative authority.

iii. Notwithstanding Clause J.12.a.ii of this Section, an owner or operator may also employ an alternative monitoring approach that meets the requirements of Clause J.12.a.i of this Section if approved by the administrative authority.

iv. Failure to use a monitoring system that meets the requirements of this Paragraph renders the PAL invalid.

b. Minimum Performance Requirements for Approved Monitoring Approaches. The following are

acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Subparagraphs J.12.c-i of this Section:

i. mass balance calculations for activities using coatings or solvents;

ii. CEMS;

iii. CPMS or PEMS; and

iv. emission factors.

c. Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

i. provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

ii. assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

iii. where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the administrative authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

i. CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

ii. CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

i. the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

ii. each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the administrative authority, while the emissions unit is operating.

f. Emission Factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

i. all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

ii. the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

iii. if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the administrative authority determines that testing is not required.

g. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

h. Notwithstanding the requirements in Subparagraphs J.12.c-d of this Section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the administrative authority shall, at the time of permit issuance:

i. establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

ii. determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

i. Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the administrative authority. Such testing must occur at least once every five years after issuance of the PAL.

13. Recordkeeping Requirements

a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Subsection and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

i. a copy of the PAL permit application and any applications for revisions to the PAL; and

ii. each annual certification of compliance in accordance with Title V and the data relied on in certifying the compliance.

14. Reporting and Notification Requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the administrative authority in accordance with the applicable Title V operating permit program. The reports shall meet the following requirements.

a. Semiannual Report. The semiannual report shall be submitted to the administrative authority within 30 days of the end of each reporting period. This report shall contain the following information:

i. the identification of the owner or operator and the permit number;

ii. total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded in accordance with Subparagraph J.13.a of this Section;

iii. all data relied upon, including but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

iv. a list of any emissions units modified or added to the major stationary source during the preceding 6-month period;

v. the number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action taken;

vi. a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Subparagraph J.12.g of this Section;

vii. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

b. Deviation Report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted in accordance with 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

i. the identification of the owner or operator and the permit number;

ii. the PAL requirement that experienced the deviation or that was exceeded;

iii. emissions resulting from the deviation or the exceedance; and

iv. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

c. Revalidation Results. The owner or operator shall submit to the administrative authority the results of any revalidation test or method within three months after completion of such test or method.

15. Transition Requirements

a. No administrative authority may issue a PAL that does not comply with the requirements of this Subsection after the administrator has approved regulations incorporating these requirements into the State Implementation Plan.

b. The administrative authority may supersede any PAL that was established prior to the date of approval of the State Implementation Plan by the administrator with a PAL that complies with the requirements of this Subsection.

K. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

Act repealed.

Actual Emissions the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Subsection J of this Section. Instead, the definitions of *projected actual emissions* and *baseline actual emissions* in this Subsection shall apply for those purposes.

a. In general, *actual emissions* as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal major stationary source operation. A different time period shall be allowed upon a determination by the department that it is more representative of normal major stationary source operation. *Actual emissions* shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The administrative authority may presume that source-specific allowable emissions for the unit are equivalent to the *actual emissions* of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, *actual emissions* shall equal the allowable emissions of the unit.

Administrator the *administrator* of the USEPA or an authorized representative.

Adverse Impact on Visibility visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with:

a. times of visitor use of the mandatory federal Class I area; and

b. the frequency and timing of natural conditions that reduce visibility.

This term does not include effects on integral vista as defined at 40 CFR 51.301, Definitions.

Allowable Emissions the emissions rate of a major stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. the applicable standard set forth in 40 CFR Part 60, 61, or 63;

b. any applicable State Implementation Plan emissions limitation including those with a future compliance date; or

c. the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

Baseline Actual Emissions the rate of emissions, in tons per year, of a regulated pollutant, determined as follows.

a. For any existing electric utility steam generating unit, *baseline actual emissions* means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The administrative authority shall allow the use of a different time period upon a

determination that it is more representative of normal source operation.

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

iii. For a regulated pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the *baseline actual emissions* for the emissions units being changed. A different consecutive 24-month period can be used for each regulated pollutant.

iv. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clause a.ii of this definition.

b. For an existing emissions unit, other than an electric utility steam generating unit, *baseline actual emissions* means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the administrative authority for a permit required under this Section, except that the 10-year period shall not include any period earlier than November 15, 1990.

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

ii The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the *baseline actual emissions* need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Paragraphs F.4 and 5 of this Section.

iv. For a regulated pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the *baseline actual emissions* for the emissions units being changed. A different consecutive 24-month period may be used for each regulated pollutant.

v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clauses b.ii-iii of this definition.

c. For a new emissions unit, the *baseline actual emissions* for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the *baseline actual emissions* shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Subparagraph a of this definition, for other existing emissions units in accordance with the procedures contained in Subparagraph b of this definition, and for a new emissions unit in accordance with the procedures contained in Subparagraph c of this definition.

Begin Actual Construction initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building support and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

Best Available Control Technology (BACT) as defined in LAC 33:III.509.

Building, Structure, Facility, or Installation all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, or are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

Clean Air Act the federal Clean Air Act, 42 U.S.C. 7401-7671(q).

Clean Coal Technology any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, which was not in widespread use as of November 15, 1990.

Clean Coal Technology Demonstration Project a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

Clean Unit Repealed.

Commence as applied to construction of a major stationary source or major modification means that the

owner or operator has all necessary preconstruction approvals or permits and either has:

a. begun, or caused to begin, a continuous program of actual on-site construction of the major stationary source, to be completed within a reasonable time; or

b. entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the major stationary source to be completed within a reasonable time.

Construction any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

Continuous Emissions Monitoring System (CEMS) all of the equipment that may be required to meet the data acquisition and availability requirements of this Section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Continuous Emissions Rate Monitoring System (CERMS) the total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

Continuous Parameter Monitoring System (CPMS) all of the equipment necessary to meet the data acquisition and availability requirements of this Section, to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter values on a continuous basis.

Electric Utility Steam Generating Unit any steam-electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Emissions Unit any part of a major stationary source that emits or would have the potential to emit any regulated pollutant, and includes an *electric utility steam generating unit* as defined in this Subsection. For purposes of this Section, there are two types of *emissions units* as described below.

a. A *new emissions unit* is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated.

b. An *existing emissions unit* is any emissions unit that does not meet the requirements in Subparagraph a of this definition. A *replacement unit*, as defined in this Subsection, is an *existing emissions unit*.

Federal Class I Area any federal land that is classified or reclassified as a "Class I" area in accordance with the federal Clean Air Act.

Federal Land Manager with respect to any lands in the United States, the secretary of the department with authority over such lands.

Federally Enforceable all limitations and conditions which are *federally enforceable* by the administrator, including those requirements developed in accordance with 40 CFR Parts 60, 61, and 63, requirements within any applicable State Implementation Plan, any permit requirements established in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

Fugitive Emissions those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Lowest Achievable Emission Rate for any source, the more stringent rate of emissions based on the following:

a. the most stringent emissions limitation that is contained in the implementation plan of any state for such class or category of major stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

b. the most stringent emissions limitation that is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified major stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

Major Modification

a. Any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase, as listed in Subsection L.Table 1 of this Section, of any regulated pollutant for which the stationary source is already major.

b. Any net emissions increase that is considered significant for VOC or NO_X shall be considered significant for ozone. VOC and NO_x emissions shall not be aggregated for the purpose of determining significant net emissions increases.

c. A physical change or change in the method of operation shall not include:

i. routine maintenance, repair, and replacement;

ii. use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in accordance with the Federal Power Act;

iii. use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

iv. use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

v. use of an alternative fuel or raw material by a stationary source that:

(a). the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition that was established after December 12, 1976, in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166; or

(b). the source is approved to use under any permit issued under regulations approved in accordance with this Section;

vi. an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition that was established after December 21, 1976, in accordance with 40 CFR 52.21 or regulations approved in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166;

vii. any change in ownership at a stationary source;

viii. reserved;

ix. the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a). the State Implementation Plan for the state in which the project is located; and

(b). other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated pollutant when the major stationary source is complying with the requirements under Subsection J of this Section for a PAL for that pollutant. Instead, the definition at Subparagraph J.2.g of this Section shall apply.

Major Stationary Source

a. any stationary source (including all emission points and units of such source located within a contiguous area and under common control) of air pollutants which emits, or has the potential to emit, any regulated pollutant at or above the threshold values defined in Subsection L.Table 1 of this Section; or

b. any physical change that would occur at a stationary source not qualifying under Subparagraph a of this definition as a *major stationary source*, if the change would constitute a *major stationary source* by itself;

c. a *major stationary source* that is major for VOC or NO_x shall be considered major for ozone. VOC and NO_x emissions shall not be aggregated for the purpose of determining *major stationary source* status;

d. a stationary source shall not be a *major stationary source* due to fugitive emissions, to the extent that they are quantifiable, unless the source belongs to:

i. any category in Table A in LAC 33:III.509; or

ii. any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act;

e. a stationary source shall not be a *major stationary source* due to secondary emissions.

Mandatory Federal Class I Area those federal lands that are international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size, and that were in existence on August 7, 1977. These areas may not be redesignated.

Natural Conditions includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

Necessary Preconstruction Approvals or Permits those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

Net Emissions Increase the amount by which the sum of the following exceeds zero:

a.i. any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source as calculated in accordance with Paragraph A.3 of this Section; and

ii. any other creditable increases and decreases in actual emissions at the major stationary source over a period including the calendar year of the proposed increase, up to the date on which the proposed increase will occur, and the preceding four consecutive calendar years. Baseline actual emissions for calculating increases and decreases under this Clause shall be determined as provided in Subsection K.*Baseline Actual Emissions* of this Section except that Clauses a.iii and b.iv of that definition shall not apply;

b. an increase or decrease in actual emissions is creditable only if neither the department nor the administrator has relied on it in issuing a permit for the source under this regulation and, for a decrease, the administrator has not relied on it in issuing a permit under 40 CFR 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs;

c. Reserved;

d. an increase in actual emissions is creditable only to the extent that the new level of allowable emissions exceeds the old level of actual emissions;

e. a decrease in actual emissions is creditable only to the extent that:

i. the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions;

ii. it is enforceable as a practical matter at and after the time that actual construction of the particular change begins;

iii. it has not been relied on by the state in demonstrating attainment or reasonable further progress;

iv. it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

v. Reserved;

f. an increase that results from a physical change at a major stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days;

g. Subparagraph K.A*ctual Emissions*.a of this Section shall not apply for determining creditable increases and decreases or after a change.

Nonattainment Area for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A)-(C) of Section 107(d)(1) of the Federal Clean Air Act.

Pollution Control Project (PCP) Repealed.

Pollution Prevention any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling,

treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

Portable Stationary Source a source that can be relocated to another operating site with limited dismantling and reassembly.

Potential to Emit the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

Predictive Emissions Monitoring System (PEMS) all of the equipment necessary to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

Prevention of Significant Deterioration (PSD) Permit any permit that is issued under a major source preconstruction permit program that has been approved by the administrator and incorporated into the State Implementation Plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

Project a physical change in, or change in the method of operation of, an existing major stationary source.

Projected Actual Emissions the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the *projected actual emissions* before beginning actual construction, the owner or operator of the major stationary source:

a. shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

b. shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

c. shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the *baseline actual emissions* as defined in this Subsection and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

d. in lieu of using the method set out in Subparagraphs a-c of this definition, may elect to use the emissions unit's *potential to emit*, in tons per year, as defined in this Subsection.

Regulated Pollutant any air pollutant, the emission or ambient concentration of which is regulated in accordance with the Clean Air Act.

Replacement Unit an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The emissions unit does not alter the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a *new emissions unit*, as defined in this Subsection.

Secondary Emissions emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this Section, *secondary emissions* must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. *Secondary emissions* include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. *Secondary emissions* do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Significant in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed the lower of any of the following rates or the applicable major modification significant net increase threshold in Subsection L.Table 1 of this Section.

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

Stationary Source any building, structure, facility, or installation which emits or may emit any regulated pollutant.

Temporary Clean Coal Technology Demonstration Project a clean coal technology demonstration project that is operated for a period of five years or less, and that

complies with the State Implementation Plan for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

Temporary Source a stationary source that changes its location or ceases to exist within one year from the date of initial start of operations.

Visibility Impairment any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

L. Table 1 Major Stationary Source/Major Modification Emission Thresholds

Table 1
Major Stationary Source/Major Modification Emission Thresholds

Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone VOC/NO_x[1]		Trigger Values	
Marginal[1]	100	40(40)[2]	1.10 to 1
Moderate	100	40(40)[2]	1.15 to 1
Serious	50	25[3](5)[4]	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER
Severe	25	25[3](5)[4]	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO_2	100	40	>1.00 to 1
PM_{10}			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
Lead	100	0.6	>1.00 to 1

[1]For those parishes that are designated incomplete data or transitional nonattainment for ozone, the new source review rules for a marginal classification apply.

[2]Consideration of the net emissions increase will be triggered for any project that would increase emissions by 40 tons or more per year, without regard to any project decreases.

[3]For serious and severe ozone nonattainment areas, the increase in emissions of VOC or NO_X resulting from any physical change or change in the method of operation of a stationary source shall be considered significant for purposes of determining the applicability of permit requirements, if the net emissions increase from the source equals or exceeds 25 tons per year of VOC or NO_X.

[4]Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO_X emissions by five tons or more per year, without regard to any project decreases, or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOC within the contemporaneous period or of NO_X for a period of five years after the effective date of the rescission of the NO_X waiver, and within the contemporaneous period thereafter.

VOC = volatile organic compounds
NO_X = oxides of nitrogen
CO = carbon monoxide
SO_2 = sulfur dioxide
PM_{10} = particulate matter of less than 10 microns in diameter

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§509. Prevention of Significant Deterioration

A. Applicability Procedures

1. The requirements of this Section apply to the construction of any new *major stationary source*, as defined in Subsection B of this Section, or any project at an existing *major stationary source* in an area designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the Clean Air Act.

2. The requirements of Subsections J-R of this Section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Section otherwise provides.

3. No new major stationary source or major modification to which the requirements of Subsection J-Paragraph R.5 of this Section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The administrative authority has authority to issue any such permit.

4. The requirements of the program will be applied in accordance with the following principles.

a. Except as otherwise provided in Paragraph A.5 of this Section, and consistent with the definition of *major modification* contained in Subsection B of this Section, a project is a major modification for a regulated new source review (NSR) pollutant if it causes two types of emissions increases a *significant* emissions increase, as defined in Subsection B of this Section, and a significant *net emissions increase*, as defined in Subsection B of this Section. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

b. The procedure for calculating, before beginning actual construction, whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Subparagraphs A.4.c-f of this Section. The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is as defined in Subsection B.*Net Emissions Increase* of this Section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

c. Actual-to-Projected-Actual Applicability Test for Projects That Only Involve Existing Emissions Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the *projected actual emissions*, as defined in Subsection B of

this Section, and the *baseline actual emissions*, as defined in Subparagraphs B.*Baseline Actual Emissions*.a and b of this Section, for each existing emissions unit, equals or exceeds the *significant* amount for that pollutant, as defined in Subsection B of this Section.

d. Actual-to-Potential Test for Projects That Only Involve Construction of a New Emissions Unit. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the *potential to emit*, as defined in Subsection B of this Section, from each new emissions unit following completion of the project and the *baseline actual emissions*, as defined in Subparagraph B.*Baseline Actual Emissions*.c of this Section, of these units before the project equals or exceeds the *significant* amount for that pollutant, as defined in Subsection B of this Section.

e. Reserved.

f. Hybrid Test for Projects That Involve Multiple Types of Emissions Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Subparagraphs A.4.c-e of this Section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the *significant* amount for that pollutant, as defined in Subsection B of this Section.

5. For any major stationary source for a plantwide applicability limit (PAL) for a regulated NSR pollutant, the major stationary source shall comply with the requirements under Subsection AA of this Section.

6. Reserved.

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

Actual Emissions the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Subsection AA of this Section. Instead, Subsection B.*Projected Actual Emissions* and *Baseline Actual Emissions* of this Section shall apply for those purposes.

a. In general, *actual emissions* as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and which is representative of normal source operation. The administrative authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. *Actual emissions* shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The administrative authority may presume that source-specific allowable emissions for the unit are equivalent to the *actual emissions* of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, *actual emissions* shall equal the potential to emit of the unit on that date.

Adverse Impact on Visibility visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with:

a. times of visitor use of the federal Class I area; and

b. the frequency and timing of natural conditions that reduce visibility.

Allowable Emissions the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. the applicable standards as set forth in 40 CFR Parts 60 and 61; or

b. the applicable implementation plan emissions limitation, including those with a future compliance date; or

c. the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

Baseline Actual Emissions the rate of emissions, in tons per year, of a regulated NSR pollutant, determined as follows.

a. For any existing electric utility steam generating unit, *baseline actual emissions* means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator projects to begin actual construction of the project. The administrative authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

iii. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the *baseline actual emissions* for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

iv. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clause a.ii of this definition.

b. For an existing emissions unit, other than an electric utility steam generating unit, *baseline actual emissions* means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the administrative authority for a permit required under this Section, except that the 10-year period shall not include any period earlier than November 15, 1990.

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrative authority proposed or promulgated under 40 CFR Part 63, the *baseline actual emissions* need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

iv. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the *baseline actual emissions* for all the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clauses b.ii and iii of this definition.

c. For a new emissions unit, the *baseline actual emissions* for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the *baseline actual emissions* shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Subparagraph a of this definition, for other existing emissions units in accordance with the procedures contained in Subparagraph b of this definition, and for a new emissions unit in accordance with the procedures contained in Subparagraph c of this definition.

Baseline Area—

a. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1) (D) or (E) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established.

b. Area redesignations under Section 107(d)(1) (D) or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

i. establishes a minor source baseline date; or

ii. is subject to 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166 and would be constructed in the same state as the state proposing the redesignation.

c. Any *baseline area* established originally for the total suspended particulates (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such *baseline area* shall not remain in effect if the administrative authority rescinds the corresponding minor source baseline date in accordance with Subparagraph B.*Baseline Date*.d of this Section.

Baseline Concentration

a. That ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A *baseline concentration* is determined for each pollutant for which a minor source baseline date is established and shall include:

i. the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in Subparagraph b of this definition;

ii. the allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the *baseline concentration* and will affect the applicable maximum allowable increase:

i. actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

ii. actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

Baseline Date

a. *Major Source Baseline Date*

i. in the case of particulate matter (PM_{10}) and sulfur dioxide, January 6, 1975; and

ii. in the case of nitrogen dioxide, February 8, 1988.

b. *Minor Source Baseline Date* the earliest date after the trigger date on which a major stationary source or a major modification subject to this Section submits a complete application under the relevant regulations. The trigger date is:

i. in the case of particulate matter (PM_{10}) and sulfur dioxide, August 7, 1977; and

ii. in the case of nitrogen dioxide, February 8, 1988.

c. The *baseline date* is established for each pollutant for which increments or other equivalent measures have been established if:

i. the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(i)(D) or (E) of the Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166; and

ii. in the case of a major stationary source, the pollutant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any *minor source baseline date* established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the administrative authority shall rescind a *minor source baseline date* where it can be shown, to the satisfaction of the administrative authority, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

Begin Actual Construction in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, that mark the initiation of the change.

Best Available Control Technology (BACT)

a. An emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each pollutant subject to regulation under this Section that would be emitted from any proposed major stationary source or major modification that the administrative authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant.

b. In no event shall application of *best available control technology* result in emissions of any pollutant that would exceed the emissions allowed by an applicable standard under 40 CFR Parts 60 and 61. If the administrative authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of *best available control technology*. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means that achieve equivalent results.

Building, Structure, Facility, or Installation all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

Clean Air Act the federal Clean Air Act, as amended (42 U.S.C. Chapter 85).

Clean Coal Technology any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, which was not in widespread use as of November 15, 1990.

Clean Coal Technology Demonstration Project a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

Clean Unit Repealed.

Commence as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

a. begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Complete in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the administrative authority from requesting or accepting any additional information.

Construction any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in actual emissions.

Continuous Emissions Monitoring System (CEMS) all of the equipment that may be required to meet the data acquisition and availability requirements of this Section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Continuous Emissions Rate Monitoring System (CERMS) the total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

Continuous Parameter Monitoring System (CPMS) all of the equipment necessary to meet the data acquisition and availability requirements of this Section, to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter values on a continuous basis.

Electric Utility Steam Generating Unit any steam-electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam

supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Emissions Unit any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant, and includes an *electric utility steam generating unit*, as defined in this Subsection. For purposes of this Section, there are two types of *emissions units*.

a. A *new emissions unit* is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated.

b. An *existing emissions unit* is any emissions unit that is not a new emissions unit. A *replacement unit*, as defined in this Subsection, is an *existing emissions unit*.

Federal Land Manager with respect to any lands in the United States, the secretary of the department with authority over such lands.

Federally Enforceable all limitations and conditions that are enforceable by the administrator, including those requirements developed in accordance with 40 CFR Parts 60, 61, and 63, requirements within any applicable State Implementation Plan, any permit requirements established in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

Fugitive Emissions those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

High Terrain any area having an elevation 900 feet or more above the base of the stack of a source.

Indian Governing Body the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Indian Reservation any federally-recognized reservation established by treaty, agreement, executive order, or act of Congress.

Innovative Control Technology any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

Low Terrain any area other than *high terrain*, as defined in this Subsection.

Lowest Achievable Emission Rate (LAER) as defined in LAC 33:III.504.

Major Modification

a. Any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include:

i. routine maintenance, repair, and replacement;

ii. use of an alternative fuel or raw material by reason of any order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in accordance with the Federal Power Act;

iii. use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act;

iv. use of an alternate fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

v. use by a source of an alternate fuel or raw material that:

(a). the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition that was established after January 6, 1975, in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166; or

(b). the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166;

vi. an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition that was established after January 6, 1975, in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166;

vii. any change in source ownership;

viii. Reserved;

ix. the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a). the State Implementation Plan for the state in which the project is located; and

(b). other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

x. the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

xi. the reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular pollutant subject to regulation under this Section when the major stationary source is complying with the requirements under Subsection AA of this Section for a PAL for that pollutant. Instead, the definition at Subparagraph AA.2.g of this Section shall apply.

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under this Section;

b. for stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under this Section; or

c. any physical change that would occur at a source not otherwise qualifying as a major stationary source under Subparagraphs a and b of this definition if the change would constitute a major source by itself;

d. a major source that is major for volatile organic compounds shall be considered major for ozone;

e. the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a *major stationary source*, unless the source is listed in Table A of this definition or, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

Table A Stationary Sources of Air Pollutants	
1	Fossil fuel-fired steam electric plants of more than 250 million British thermal units (Btu) per hour heat input
2	Coal cleaning plants (with thermal dryers)
3	Kraft pulp mills
4	Portland cement plants
5	Primary zinc smelters
6	Iron and steel mill plants
7	Primary aluminum ore reduction plants
8	Primary copper smelters
9	Municipal incinerators capable of charging more than 250 tons of refuse per day
10	Hydrofluoric, sulfuric, and nitric acid plants
11	Petroleum refineries
12	Lime plants
13	Phosphate rock processing plants
14	Coke oven batteries
15	Sulfur recovery plants
16	Carbon black plants (furnace process)
17	Primary lead smelters
18	Fuel conversion plants
19	Sintering plants
20	Secondary metal production plants
21	Chemical process plants
22	Fossil fuel boilers (or combinations thereof) totaling more than 250 million Btu per hour heat input.
23	Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
24	Taconite ore processing plants
25	Glass fiber processing plants
26	Charcoal production plants

Necessary Preconstruction Approvals or Permits those permits or approvals required under all applicable air quality control laws and regulations.

Net Emissions Increase

a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

i. the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated in accordance with Paragraph A.4 of this Section; and

ii. any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this Clause shall be determined as provided in Subsection B.*Baseline Actual Emissions* of this Section, except that Clauses B.*Baseline Actual Emissions*.a.iii and b.iv of this Section shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

i. the date five years before construction on the particular change commences; and

ii. the date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if the administrative authority has not relied on it in issuing a permit for the source under this Section, which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

i. the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

ii. it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

iii. it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. Reserved.

h. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

i. Subparagraph B.*Actual Emissions*.a of this Section shall not apply for determining creditable increases and decreases.

Pollution Control Project (PCP) Repealed.

Pollution Prevention any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

Potential to Emit the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if

the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

Predictive Emissions Monitoring System (PEMS) all of the equipment necessary to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

Prevention of Significant Deterioration (PSD) Program a major source preconstruction permit program that has been approved by the administrator and incorporated into the State Implementation Plan to implement the requirements of this Section or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

Project a physical change in, or change in the method of operation of, an existing major stationary source.

Projected Actual Emissions the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the *projected actual emissions* before beginning actual construction, the owner or operator of the major stationary source:

a. shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

b. shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

c. shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the *baseline actual emissions* as defined in this Subsection and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

d. in lieu of using the method set out in Subparagraphs a-c of this definition, may elect to use the emissions unit's *potential to emit*, in tons per year, as defined in this Subsection.

Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation, where the unit:

a. has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the administrative authority's emissions inventory at the time of enactment;

b. was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

c. is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

d. is otherwise in compliance with the requirements of the Clean Air Act.

Reasonably Available Control Technology (RACT) devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

a. the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

b. the social, environmental, and economic impact of such controls; and

c. alternative means of providing for attainment and maintenance of such standard.

Regulated NSR Pollutant

a. any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrative authority (e.g., volatile organic compounds are precursors for ozone);

b. any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

c. any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act; or

d. any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act or added to the list in accordance with Section 112(b)(2) of the Clean Air Act, which have not been delisted in accordance with Section 112(b)(3) of the Clean Air Act, are not *regulated NSR pollutants* unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Clean Air Act.

Replacement Unit an emissions unit for which all the criteria listed in Subparagraphs a-d of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The emissions unit does not alter the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a *new emissions unit*, as defined in this Subsection.

Repowering replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrative authority, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

a. *Repowering* shall also include any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

b. The administrative authority shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under Section 409 of the Clean Air Act.

Reviewing Authority Repealed.

Secondary Emissions emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this definition, *secondary emissions* must be specific, well defined, and quantifiable, and impact the same general areas as the stationary source modification that causes the secondary emissions. *Secondary emissions* include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. *Secondary emissions* do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Significant

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics[1]	0.0000035 tpy
Municipal waste combustor metals[2]	15 tpy
Municipal waste combustor acid gases[3]	40 tpy
Municipal solid waste landfills emissions[4]	50 tpy

[1]Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.
[2]Measured as particulate matter.
[3]Measured as sulfur dioxide and hydrogen chloride.
[4]Measured as nonmethane organic compounds.

b. in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that Subparagraph a of this definition does not list, any emissions rate;

c. notwithstanding Subparagraph a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1µg/m^3 (24-hour average).

Significant Emissions Increase for a regulated NSR pollutant, an increase in emissions that is *significant*, as defined in this Subsection, for that pollutant.

Stationary Source any building, structure, facility, or installation that emits or may emit any pollutant subject to regulation under this Section.

Temporary Clean Coal Technology Demonstration Project a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the State Implementation Plans for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

C. Ambient Air Increments. In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following.

Pollutant	Maximum Allowable Increase (Micrograms per Cubic Meter)[1]
Class I	
Particulate matter:	
PM10, annual arithmetic mean	4
PM10, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM10, annual arithmetic mean	17
PM10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM10, annual arithmetic mean	34
PM10, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

[1]For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

D. Ambient Air Ceilings. No concentration of a pollutant shall exceed:

1. the concentration permitted under the national secondary ambient air quality standard; or

2. the concentration permitted under the national primary ambient air quality standard; whichever concentration is lowest for the pollutant for a period of exposure.

E. Restrictions on Area Classifications

1. All of the following areas that were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

a. international parks;

b. national wilderness areas that exceed 5,000 acres in size;

c. national memorial parks that exceed 5,000 acres in size; and

d. national parks that exceed 6,000 acres in size.

2. Areas that were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Section.

3. Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Section.

4. The following areas may be redesignated only as Class I or II:

a. an area that as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, or a national lakeshore or seashore; and

b. a national park or national wilderness area established after August 7, 1977, that exceeds 10,000 acres in size.

F. Reserved.

G. Redesignation

1. All areas, except as otherwise provided under Subsection E of this Section, are designated Class II as of December 5, 1974. Redesignation, except as otherwise precluded by Subsection E of this Section, may be proposed by the respective states or Indian governing bodies, as provided below, subject to approval by the administrative authority as a revision to the applicable State Implementation Plan.

2. The state may submit to the administrator a proposal to redesignate areas of the state Class I or Class II, provided that:

a. at least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

b. other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

c. a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

d. prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the state has provided written notice to the appropriate federal land manager and afforded adequate opportunity (not in excess of 60 days) to confer with the state respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the state shall have published a list of any inconsistency between such redesignation and such comments and recommendations, together with the reasons for making such redesignation against the recommendation of the federal land manager; and

e. the state has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

3. Any area other than an area to which Subsection E of this Section refers may be redesignated as Class III if:

a. the redesignation would meet the requirements of Paragraph G.2 of this Section;

b. the redesignation, except any established by an Indian governing body, has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless state law provides that the redesignation must be specifically approved by state legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;

c. the redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

d. any permit application for any major stationary source or major modification, subject to review under Subsection L of this Section, which could receive a permit under this Section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

4. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body. The appropriate Indian governing body may submit to the administrative authority a proposal to redesignate areas Class I, Class II, or Class III, provided that:

a. the Indian governing body has followed procedures equivalent to those required of a state under Paragraph G.2 and Subparagraphs G.3.c and d of this Section; and

b. such redesignation is proposed after consultation with the states in which the Indian reservation is located and which border the Indian reservation.

H. Stack Heights

1. The degree of emission limitation required for control of any air pollutant under this Section shall not be affected in any manner by:

a. so much of the stack height of any source as exceeds good engineering practice; or

b. any other dispersion technique.

2. Paragraph H.1 of this Section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

I. Exemptions

1. The requirements of Subsections J-R of this Section shall not apply to a particular major stationary source or major modification if:

a. the major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or

b. the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, were considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any following categories:

i. coal cleaning plants (with thermal dryers);

ii. kraft pulp mills;

iii. portland cement plants;

iv. primary zinc smelters;

v. iron and steel mills;

vi. primary aluminum ore reduction plants;

vii. primary copper smelters;

viii. municipal incinerators capable of charging more than 250 tons of refuse per day;

ix. hydrofluoric, sulfuric, or nitric acid plants;

x. petroleum refineries;

xi. lime plants;

xii. phosphate rock processing plants;

xiii. coke oven batteries;

xiv. sulfur recovery plants;

xv. carbon black plants (furnace process);

xvi. primary lead smelters;

xvii. fuel conversion plants;

xviii. sintering plants;

xix. secondary metal production plants;

xx. chemical process plants;

xxi. fossil fuel boilers (or combination thereof) totaling more than 250 million british thermal units per hour heat input;

xxii. petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

xxiii. taconite ore processing plants;

xxiv. glass fiber processing plants;

xxv. charcoal production plants;

xxvi. fossil fuel-fired steam electric plants of more than 250 million british thermal units per hour heat input;

xxvii. any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act; or

c. the source or modification is a portable stationary source that has previously received a permit under requirements equivalent to those contained in Subsections J-R of this Section, if:

i. the source proposes to relocate and emissions of the source at the new location would be temporary; and

ii. the emissions from the source would not exceed its allowable emissions; and

iii. the emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

iv. reasonable notice is given to the administrative authority prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the administrative authority not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the administrative authority.

2. The requirements of Subsections J-R of this Section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Clean Air Act.

3. The requirements of Subsections K, M, and O of this Section shall not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

4. The requirements of Subsections K, M, and O of this Section as they relate to any maximum allowable increase for a Class II area shall not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each a regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

5. The administrative authority may exempt a stationary source or modification from the requirements of Subsection M of this Section, with respect to monitoring for a particular pollutant, if:

a. the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide	575 $\mu g/m^3$	8-hour average
Nitrogen dioxide	14 $\mu g/m^3$	annual average
Particulate matter	10 $\mu g/m^3$ of PM_{10}	24-hour average
Sulfur dioxide	13 $\mu g/m^3$	24-hour average
Ozone	No *de minimis* air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 $\mu g/m^3$	3-month average
Fluorides	0.25 $\mu g/m^3$	24-hour average
Total reduced sulfur	10 $\mu g/m^3$	1-hour average
Hydrogen sulfide	0.2 $\mu g/m^3$	1-hour average
Reduced sulfur compounds	10 $\mu g/m^3$	1-hour average

b. the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Subparagraph I.5.a of this Section; or

c. the pollutant is not listed in Subparagraph I.5.a of this Section.

6. Reserved.

7. Reserved.

8. The permitting requirements of Paragraph K.2 of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this Section before the provisions embodying the maximum allowable increase took effect as part of the applicable State Implementation Plan and the permitting authority subsequently determined that the application as submitted before that date was complete.

9. The permitting requirements of Paragraph K.2 of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if:

a. the owner or operator of the source or modification submitted an application for a permit under this Section before the provisions embodying the maximum allowable increases for PM_{10} took effect in a State Implementation Plan to which this Section applies; and

b. the permitting authority subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements equivalent to Paragraph K.2 of this Section shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

J. Control Technology Review

1. A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emission standard and standard of performance under 40 CFR Parts 60 and 61.

2. A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

3. A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

4. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time that occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

K. Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, would not cause or contribute to air pollution in violation of:

1. any national ambient air quality standard in any air quality control region; or

2. any applicable maximum allowable increase over the baseline concentration in any area.

L. Air Quality Models

1. All estimates of ambient concentrations required under this Subsection shall be based on applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models).

2. Where an air quality model specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with Subsection Q of this Section.

M. Air Quality Analysis

1. Preapplication Analysis

a. Any application for a permit under this Section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

i. for the source, each pollutant that it would have the potential to emit in a significant amount;

ii. for the modification, each pollutant for which it would result in a significant net emissions increase.

b. With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the administrative authority determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

c. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

d. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

e. For any application that became complete, except as to the requirements of Subparagraphs M.1.c and d of this Section, between June 8, 1981 and February 9, 1982, the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least the period from February 9,

1981, to the date the application became otherwise complete, except:

i. if the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations;

ii. if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least that shorter period;

iii. if the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the administrative authority may waive the otherwise-applicable requirements of this Subsection to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

f. The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under Paragraph M.1 of this Section.

g. For any application that became complete, except as to the requirements of Subparagraphs M.1.c and d of this Section pertaining to PM_{10}, after December 1, 1988 and no later than August 1, 1989, the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that Subparagraph M.1.c of this Section requires shall have been gathered over that shorter period.

h. With respect to any requirements for air quality monitoring of PM_{10} under Subparagraphs I.9.a and b of this Section, the owner or operator of the source or modification shall use a monitoring method approved by the administrative authority and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the administrative authority.

2. Post-Construction Monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the administrative authority determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

3. Operations of Monitoring Stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this Subsection.

N. Source Information. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this Section.

1. With respect to a source or modification to which Subsections J, L, N, and P of this Section apply, such information shall include:

a. a description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

b. a detailed schedule for construction of the source or modification;

c. a detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

2. Upon request of the administrative authority, the owner or operator shall also provide information on:

a. the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

b. the air quality impacts, and the nature and extent of, any or all general commercial, residential, industrial, and other growth that has occurred since August 7, 1977, in the area the source or modification would affect.

O. Additional Impact Analyses

1. The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

2. The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

3. Visibility Monitoring. The administrative authority may require monitoring of visibility in any federal Class I area near the proposed new stationary source for major modification for such purposes and by such means as the administrative authority deems necessary and appropriate.

P. Sources Impacting Federal Class I Areas Additional Requirements

1. Notice to Federal Land Managers. The administrative authority shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal Class I area. The administrative authority shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under Subsection Q of this Section, and shall make available to them any materials used in making that determination, promptly after the administrative authority makes such determination. Finally, the

administrative authority shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

2. Federal Land Manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality-related values, including visibility, of such lands and to consider, in consultation with the administrative authority, whether a proposed source or modification will have an adverse impact on such values.

3. Visibility Analysis. The administrative authority shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by Paragraph P.1 of this Section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal Class I area. Where the administrative authority finds that such an analysis does not demonstrate to the satisfaction of the administrative authority that an adverse impact on visibility will result in the federal Class I area, the administrative authority must, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

4. Denial Impact on Air Quality-Related Values. The federal land manager of any such lands may demonstrate to the administrative authority that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values, including visibility, of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the administrative authority concurs with such demonstration, then he shall not issue the permit.

5. Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality-related values of any such lands, including visibility, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the administrative authority, provided that the applicable requirements of this Section are otherwise met, may issue the permit with such emission limitations as may be necessary to ensure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants.

Pollutant	Maximum Allowable Increase (Micrograms per Cubic Meter)
Particulate matter:	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

6. Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence. The owner or operator of a proposed source or modification that cannot be approved under Paragraph P.4 of this Section may demonstrate to the governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this Paragraph would not adversely affect the air quality-related values of the area, including visibility. The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the administrative authority may issue a permit to such source or modification in accordance with the requirements of Paragraph P.7 of this Section, provided that the applicable requirements of this Section are otherwise met.

7. Variance by the Governor with the President's Concurrence. In any case where the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President. The President may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the administrative authority may issue a permit in accordance with the requirements of this Paragraph, provided that the applicable requirements of this Section are otherwise met.

8. Emission Limitations for Presidential or Gubernatorial Variance. In the case of a permit issued in accordance with Paragraph P.5 or 6 of this Section, the source or modification shall comply with such emission limitations as may be necessary to ensure that emissions of sulfur dioxide from the source or modification would not, during any day on which the otherwise applicable maximum allowable increases are exceeded, cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to ensure that such emissions would not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period.

Maximum Allowable Increase [Micrograms per Cubic Meter]		
Period of Exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

Q. Public Participation

1. The administrative authority shall notify all applicants within 60 days after receipt of the application as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the administrative authority received all required information.

2. Within one year after receipt of a complete application, the administrative authority shall:

a. make a preliminary determination whether construction should be approved, approved with conditions, or disapproved;

b. make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination;

c. notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment;

d. send a copy of the notice of public comment to the applicant, the administrator, and officials and agencies having cognizance over the location where the proposed construction would occur, as follows:

i. any other state or local air pollution control agencies;

ii. the chief executives of the city and parish where the source would be located;

iii. any comprehensive regional land use planning agency; and

iv. any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification;

e. provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations;

f. consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. The administrative authority shall make all comments available for public inspection in the same locations where the administrative authority made available preconstruction information relating to the proposed source or modification;

g. make a final determination whether construction should be approved, approved with conditions, or disapproved;

h. notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the administrative authority made available preconstruction information and public comments relating to the source.

R. Source Obligation

1. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted in accordance with this Section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

2. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The administrative authority may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state, or federal law.

4. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Subsections J-S of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

5. Reserved.

6. The provisions of this Paragraph apply to projects at an existing emissions unit at a major stationary source, other than projects at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in Subparagraphs B.*Projected Actual Emissions.*a-c of this Section for calculating projected actual emissions.

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

i. a description of the project;

ii. identification of the emission units whose emissions of a regulated NSR pollutant could be affected by the project; and

iii. a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Subparagraph B.*Projected Actual Emissions.*c of this Section and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Subparagraph R.6.a of this Section to the administrative authority. Nothing in this Subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the administrative authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Clause R.6.a.ii of this Section, and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years

following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority within 60 days after the end of each year during which records must be generated under Subparagraph R.6.c of this Section setting out the unit's annual emissions during the calendar year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority if the annual emissions, in tons per year, from the project identified in Subparagraph R.6.a of this Section, exceed the baseline actual emissions, as documented and maintained in accordance with Clause R.6.a.iii of this Section, by a significant amount, as defined in Subsection B.*Significant* of this Section, for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained in accordance with Clause R.6.a.iii of this Section. Such report shall be submitted to the administrative authority within 60 days after the end of such year. The report shall contain the following:

i. the name, address, and telephone number of the major stationary source;

ii. the annual emissions as calculated in accordance with Subparagraph R.6.c of this Section; and

iii. any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

7. The owner or operator of the source shall make the information required to be documented and maintained in accordance with Paragraph R.6 of this Section available for review upon a request for inspection by the administrative authority or the general public in accordance with the requirements contained in 40 CFR 70.4(b)(3)(viii).

S. Reserved.

T. Reserved.

U. Reserved.

V. Innovative Control Technology

1. An owner or operator of a proposed major stationary source or major modification may request the administrative authority in writing, no later than the close of the comment period under Subsection Q.2.e of this Section, to approve a system of innovative control technology.

2. The administrative authority may, with the consent of the governor of affected states, determine that the source or modification may employ a system of innovative control technology, if:

a. the proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

b. the owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Paragraph J.2 of this Section by a date specified by the administrative authority. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

c. the source or modification would meet the requirements of Subsections J and K of this Section, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the administrative authority;

d. the source or modification would not, before the date specified by the administrative authority:

i. cause or contribute to a violation of an applicable national ambient air quality standard; or

ii. impact any area where an applicable increment is known to be violated;

e. the provisions of Subsection P of this Section, relating to Class I areas, have been satisfied with respect to all periods during the life of the source or modification;

f. all other applicable requirements including those for public participation have been met.

3. The administrative authority shall withdraw any approval to employ a system of innovative control technology made under this Subsection, if:

a. the proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

b. the proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

c. the administrative authority decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

4. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with Paragraph V.3 of this Section, the administrative authority may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

W. Permit Rescission

1. Any permit issued under this Section or a prior version of this Section shall remain in effect, unless and until it expires under Subsection R of this Section or is rescinded.

2. Any owner or operator of a stationary source or modification who holds a permit for the source or modification that was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this Section, may request that the administrative authority rescind the permit or a particular portion of the permit.

3. The administrative authority shall grant an application for rescission if the application shows that this Section, as it existed at the time the permit was issued, would not apply to the source or modification.

4. If the administrative authority rescinds a permit under this Subsection, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

X. Reserved.

Y. Reserved.

Z. Reserved.

AA. Actuals PALs. The following provisions govern actuals PALs.

1. Applicability

a. The administrative authority may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this Subsection. The term "PAL" shall mean "actuals PAL" throughout this Subsection.

b. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Subsection, and complies with the PAL permit:

i. is not a major modification for the PAL pollutant;

ii. does not have to be approved through the PSD program; and

iii. is not subject to the provisions in Paragraph R.4 of this Section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

c. Except as provided under Clause AA.1.b.iii of this Section, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

2. Definitions. For the purposes of this Subsection, the following definitions apply. When a term is not defined in this Paragraph, it shall have the meaning given in Subsection B of this Section or in the Clean Air Act.

a. *Actuals PAL* a PAL for a major stationary source based on the *baseline actual emissions*, as defined in Subsection B of this Section, of all *emissions units*, as defined in Subsection B of this Section, at the source that emit or have the potential to emit the PAL pollutant.

b. *Allowable Emissions* as defined in Subsection B of this Section, except for the following modifications.

i. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

ii. An emissions unit's potential to emit shall be determined using the definition in Subsection B of this Section, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

c. *Major Emissions Unit*

i. any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

ii. any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of *major stationary source* in Section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

d. *Plantwide Applicability Limitation* (PAL*)* an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subsection.

e. *PAL Effective Date* generally, the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

f. *PAL Effective Period* the period beginning with the PAL effective date and ending 10 years later.

g. *PAL Major Modification* any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL, notwithstanding the definitions for *major modification* and *net emissions increase* in Subsection B of this Section.

h. *PAL Permit* the major NSR permit, the minor NSR permit, or the state operating permit under a program that is approved into the State Implementation Plan or the Title V permit issued by the administrative authority that establishes a PAL for a major stationary source.

i. *PAL Pollutant* the pollutant for which a PAL is established at a major stationary source.

j. *Significant Emissions Unit* an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the *significant* level, as defined in Subsection B of this Section or in the Clean Air Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a *major emissions unit* as defined in Subparagraph AA.2.c of this Section.

k. *Small Emissions Unit* an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the *significant* level for that PAL pollutant, as defined in Subsection B of this Section or in the Clean Air Act, whichever is lower.

3. Permit Application Requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the administrative authority for approval:

a. a list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

b. calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction;

c. the calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subparagraph AA.13.a of this Section.

4. General Requirements for Establishing PALs

a. The administrative authority is allowed to establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met.

i. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each

month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

ii. The PAL shall be established in a PAL permit that meets the public participation requirements in Paragraph AA.5 of this Section.

iii. The PAL permit shall contain all the requirements of Paragraph AA.7 of this Section.

iv. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

v. Each PAL shall regulate emissions of only one pollutant.

vi. Each PAL shall have a PAL effective period of 10 years.

vii. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Paragraphs AA.12-14 of this Section for each emissions unit under the PAL through the PAL effective period.

b. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. Public Participation Requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161. This includes the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The administrative authority must address all material comments before taking final action on the permit.

6. Setting the 10-Year Actuals PAL Level

a. Except as provided in Subparagraph AA.6.b of this Section, the actuals PAL level for a major stationary source shall be established as the sum of the *baseline actual emissions*, as defined in Subsection B of this Section, of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable *significant* level for the PAL pollutant, as defined in Subsection B of this Section, or in the Clean Air Act, whichever is lower. When establishing the actuals PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The administrative authority shall specify a reduced PAL level (in tons/yr) in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the administrative authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit.

b. For newly-constructed units, which do not include modifications to existing units, on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Subparagraph AA.6.a of this Section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

7. Contents of the PAL Permit. The PAL permit shall contain, at a minimum, the following information:

a. the PAL pollutant and the applicable source-wide emission limitation in tons per year;

b. the PAL permit effective date and the expiration date of the PAL (PAL effective period);

c. specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Paragraph AA.10 of this Section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period, but shall remain in effect until a revised PAL permit is issued by an administrative authority;

d. a requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions;

e. a requirement that, once the PAL expires, the major stationary source is subject to the requirements of Paragraph AA.9 of this Section;

f. the calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by Subparagraph AA.13.a of this Section;

g. a requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Paragraph AA.12 of this Section;

h. a requirement to retain the records required under Paragraph AA.13 of this Section on site. Such records may be retained in an electronic format;

i. a requirement to submit the reports required under Paragraph AA.14 of this Section by the required deadlines;

j. any other requirements that the administrative authority deems necessary to implement and enforce the PAL.

8. PAL Effective Period and Reopening of the PAL Permit

a. PAL Effective Period. The administrative authority shall specify a PAL effective period of 10 years.

b. Reopening of the PAL Permit

i. During the PAL effective period, the administrative authority must reopen the PAL permit to:

(a). correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(b). reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(c). revise the PAL to reflect an increase in the PAL as provided under Paragraph AA.11 of this Section.

ii. The administrative authority shall have discretion to reopen the PAL permit in order to:

(a). reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date;

(b). reduce the PAL consistent with any other requirement that is enforceable as a practical matter, and that the state may impose on the major stationary source under the State Implementation Plan; and

(c). reduce the PAL if the administrative authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality-related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

iii. Except for the permit reopening in Subclause AA.8.b.i.(a) of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Paragraph AA.5 of this Section.

9. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Paragraph AA.10 of this Section shall expire at the end of the PAL effective period, and the following requirements shall apply.

a. Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

i. Within the time frame specified for PAL renewals in Subparagraph AA.10.b of this Section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as decided by the administrative authority, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Subparagraph AA.10.e of this Section, such distribution shall be made as if the PAL had been adjusted.

ii. The administrative authority shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the administrative authority determines is appropriate.

b. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The administrative authority may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

c. Until the administrative authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Clause AA.9.a.ii of this Section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

d. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of *major modification* in Subsection B of this Section.

e. The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period, except for those emission limitations that had been established in accordance with Paragraph R.4 of this Section, but were eliminated by the PAL in accordance with the provisions in Clause AA.1.b.iii of this Section.

10. Renewal of a PAL

a. The administrative authority shall follow the procedures specified in Paragraph AA.5 of this Section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the administrative authority.

b. Application Deadline. A major stationary source owner or operator shall submit a timely application to the administrative authority to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

c. Application Requirements. The application to renew a PAL permit shall contain the following information:

i. the information required in Subparagraphs AA.3.a-c of this Section;

ii. a proposed PAL level;

iii. the sum of the potential to emit of all emissions units under the PAL, with supporting documentation;

iv. any other information the owner or operator wishes the administrative authority to consider in determining the appropriate level for renewing the PAL.

d. PAL Adjustment. In determining whether and how to adjust the PAL, the administrative authority shall consider the options outlined in Clauses AA.10.d.i and ii of this Section. However, in no case may any such adjustment fail to comply with Clause AA.10.d.iii of this Section.

i. If the emissions level calculated in accordance with Paragraph AA.6 of this Section is equal to or greater than 80 percent of the PAL level, the administrative authority may renew the PAL at the same level without considering the factors set forth in Clause AA.10.d.ii of this Section.

ii. The administrative authority may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the administrative authority in his or her written rationale.

iii. Notwithstanding Clauses AA.10.d.i and ii of this Section:

(a). if the potential to emit of the major stationary source is less than the PAL, the administrative authority shall adjust the PAL to a level no greater than the potential to emit of the source; and

(b). the administrative authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Paragraph AA.11 of this Section regarding increasing a PAL.

e. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the administrative authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

11. Increasing a PAL During the PAL Effective Period

a. The administrative authority may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

i. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

ii. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units, exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

iii. The owner or operator shall obtain a major NSR permit for all emissions units identified in Clause AA.11.a.i of this Section, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

iv. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

b. The administrative authority shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with Clause AA.11.a.ii of this Section, plus the sum of the baseline actual emissions of the small emissions units.

c. The PAL permit shall be revised to reflect the increased PAL level in accordance with the public notice requirements of Paragraph AA.5 of this Section.

12. Monitoring Requirements for PALs

a. General Requirements

i. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

ii. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Clauses AA.12.b.i-iv of this Section and must be approved by the administrative authority.

iii. Notwithstanding Clause AA.12.a.ii of this Section, the owner or operator may also employ an alternative monitoring approach that meets the requirements of Clause AA.12.a.i of this Section if approved by the administrative authority.

iv. Failure to use a monitoring system that meets the requirements of this Paragraph renders the PAL invalid.

b. Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Subparagraphs AA.12.c-i of this Section:

i. mass balance calculations for activities using coatings or solvents;

ii. CEMS;

iii. CPMS or PEMS; and

iv. emission factors.

c. Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

i. provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

ii. assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

iii. where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of

pollutant content from such material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the administrative authority determines there is site-specific data or a site-specific monitoring program to support another content within the range.

d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

i. CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

ii. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

i. the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

ii. each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the administrative authority, while the emissions unit is operating.

f. Emission Factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

i. all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

ii. the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

iii. if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the administrative authority determines that testing is not required.

g. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

h. Notwithstanding the requirements in Subparagraphs AA.12.c-g of this Section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the administrative authority shall, at the time of permit issuance:

i. establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

ii. determine that operation of the emissions unitduring operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

i. Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the administrative authority. Such testing must occur at least once every five years after issuance of the PAL.

13. Recordkeeping Requirements

a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Subsection AA of this Section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

i. a copy of the PAL permit application and any applications for revisions to the PAL; and

ii. each annual certification of compliance in accordance with Title V of the Clean Air Act and the data relied on in certifying the compliance.

14. Reporting and Notification Requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the administrative authority in accordance with the applicable Title V operating permit program. The reports shall meet the following requirements.

a. Semiannual Report. The semiannual report shall be submitted to the administrative authority within 30 days of the end of each reporting period. This report shall contain the following information:

i. the identification of the owner or operator and the permit number;

ii. total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded in accordance with Subparagraph AA.13.a of this Section;

iii. all data relied upon, including but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

iv. a list of any emissions units modified or added to the major stationary source during the preceding 6-month period;

v. the number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action taken;

vi. a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Subparagraph AA.12.g of this Section;

vii. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

b. Deviation Report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including

periods where no monitoring is available. A report submitted in accordance with 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

i. the identification of the owner or operator and the permit number;

ii. the PAL requirement that experienced the deviation or that was exceeded;

iii. emissions resulting from the deviation or the exceedance; and

iv. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

c. Revalidation Results. The owner or operator shall submit to the administrative authority the results of any revalidation test or method within three months after completion of such test or method.

15. Transition Requirements

a. No administrative authority may issue a PAL that does not comply with the requirements of this Subsection after the administrator has approved regulations incorporating these requirements into the State Implementation Plan.

b. The administrative authority may supersede any PAL that was established prior to the date of approval of the State Implementation Plan by the administrator with a PAL that complies with the requirements of this Subsection.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

Herman Robinson, CPM
Executive Counsel

0509#049

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
Barrett Properties	Joyce	S	Tremont	9	108622 (28)
Rollar Oil Co., Inc.	Paradis	L	Bowie Land & Lumber Company	1	139597 (28)
Rollar Oil Co., Inc.	Paradis	L	Bowie Land & Lumber Company	1D	140449 (28)
Charles W. Tschirn	Golden Meadow	L	PN & P et al	5	23052
Charles W. Tschirn	Golden Meadow	L	PN & P et al	7	23151
Plymouth Oil Company	Bayou Pigeon	L	Emily G Tilly	1	25051
W. L. Estis	South Bell City	L	Arvin Fonenot et al B Gas Unit	1	49486
W. L. Estis	Fausse Pointe	L	J D Broussard et al	2	054026 (30)
Techeland Oil Corporation	Charenton	L	W C Hertel et al	9	023408
Great Southern Oil & Gas Co., Inc.	Anse La Butte	L	Breaux et al	7	201390 (30)
Cardinal Drlg Co.	Monroe	M	Wd Evans	1	90750
Mitchell & Martin	Wildcat-So LA	L	Georgia-Pacific	1	175805
Southwest Oil Properties; Inc.	Port Barre	L	H L Garland (South) Swd	6	023986 (30)
Southwest Oil Properties; Inc.	Section 28	L	E C Stuart	2	187277
Dan Nitschke	Sligo	S	Rod Ra Sup;Welch A	1	208484
Kilroy Co. Of Texas; Inc.	Hog Bayou	L	Carter-Rutherford Heirs	1	100321

James H. Welsh
Commissioner

0509#029

POTPOURRI

Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et. seq., notice is given that 13 claims in the amount of $46,484.78 were received for payment during the period July 1, 2005 - August 31, 2005.

There were 13 claims paid and 0 claims denied.

Loran Coordinates of reported underwater obstructions are:

28362	46830	Lafourche

Latitude/Longitude Coordinates of reported underwater obstructions are:

2858.227	8911.150	Plaquemines
2859.515	8912.371	Plaquemines
2905.061	8903.005	Plaquemines
2912.055	8959.221	Jefferson
2913.074	8954.055	Jefferson
2916.805	9109.396	Terrebonne
2917.303	8956.600	Jefferson
2921.295	8947.701	Plaquemines
2939.286	8922.127	St Bernard
2944.167	8938.657	St Bernard
2952.002	8940.528	St Bernard
3007.285	8913.093	St Bernard

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle
Secretary

0509#056

POTPOURRI

Department of Public Safety and Corrections
Office of State Police

Public Hearing 30 Day Period to Request
Administrative Hearing on Motor Carrier Safety Violation
(LAC 33:V.10307)

The Department of Public Safety and Corrections hereby gives notice that it will hold a public hearing on October 25, 2005 beginning at 10 a.m. in Conference Room A on the first floor of the Louisiana State Police building located at 7919 Independence Blvd., Baton Rouge, LA 70806. The purpose of this public hearing will be for the Office of State Police, Motor Carrier Safety Section to advise the public of the substantive changes that the Office of State Police has made to its proposed amendment specifying a thirty day period within which to request an administrative hearing to contest a Motor Carrier Safety violation, which was the subject of a Notice of Intent published in the *Louisiana Register* on June 20, 2005. The substantive change adopted by the Office of State Police consists of increasing the period for requesting a hearing from 30 days to 45 days. The public is invited to attend and take part in this public hearing by providing comments, information or facts relative to the proposed substantive change to be adopted by the Department of Public Safety, Office of State Police.

Stephen J. Hymel
Undersecretary

0509#055

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