

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Agricultural Commodities Commission

Fees C Amount and Time of Payment (LAC 7:XXVII.128)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., The Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agriculture Commodities Commission, proposes to amend regulations regarding the Agricultural Commodities Commission; grain grading and inspection fees.

The Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agriculture Commodities Commission intends to amend these rules and regulations in order to revise the fee schedule for inspections of grading grains.

These rules are enabled by R.S. 3:3405.

Title 7

AGRICULTURE AND ANIMALS

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Agricultural Commodities Commission

Subchapter E. Assessments and Fees

§128. Fees: Amount, Time of Payment

A. - B. ...

C. Schedule of Fees

1. The regular hours shall be 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays and declared half-holidays. All hours worked, that are not regular hours, shall be considered as overtime. Legal holidays and half-holidays shall be those legal holidays designated by the legislature in R.S. 1:55.B and any other time declared to be a holiday or half-holiday by the governor of Louisiana in accordance with R.S. 1:55.

2. The hourly rate shall be \$26 per hour, including travel time. Overtime hours shall be billed at one and one-half times the hourly rate and shall be assessed in half-hour increments.

3. Mileage shall be billed at the rate established under the Division of Administration, Policies and Procedures Memorandum Number 49 for actual miles traveled from nearest inspection point.

4. Official Services (including sampling except as indicated):

Online D/T sampling inspection service (sampling, grading and certification) per regular hour	\$ 26.00
Over time hourly rate, per hour (assessed in half hour increments)	\$ 39.00
Unit Inspection Fees (each unit is assessed the appropriate hourly rate for the time involved in addition to unit fee)	
Rail Car, per car	\$ 20.50
Truck/trailer, per carrier	\$ 10.00
Barge, per 1,000 bushels	\$ 2.60

Submitted sample inspection (assessment of overtime hourly rate, in addition to the regular fee for submitted sample inspection, whenever the applicant requests samples to be inspected during overtime hours)	\$ 12.30
Reinspection Service (based on official file sample)	
Rail car, per sample	\$ 10.30
Truck or trailer, per sample	\$ 5.30
Barge, per sample	\$ 25.30
Factor only determination, per factor (not to exceed full grade fee)	\$ 5.20
StarLink™ (if applicant supplies kit), per test	\$ 6.00
StarLink™ (if we provide kit), per test	\$ 12.00
Sampling Only Service	
Probe sampling barge, per barge	\$100.00
On-Line sampling barge, per hour	\$ 20.00

D. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), amended LR 14:527 (August 1988), LR 19:889 (July 1993), LR 23:196 (February 1997), LR 27:

Family Impact Statement

The proposed amendments to rules XXVII. §128 regarding the Agricultural Commodities Commission; Grain grading and inspection fees. The amendments to these regulations 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 the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, 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 January 25, 2001, to William Boudreaux, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments in writing at the address above. No preamble concerning the proposed rules is available

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Fees C Amount, Time of Payment

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no estimated implementation cost or savings to state or local governmental units. The proposed rule change is deemed necessary in order to revise the fee schedule for inspections of grading grains. A review by the USDA on the uniform charges for inspections and grading grains is the

reason behind this rule change. The Louisiana Department of Agriculture and Forestry grade all inland grain with the exception of the Port of New Orleans and the Port of Baton Rouge, which are export grain. Approximately six positions will continue to perform services for this program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is an estimated increase in revenue collections to state and local governmental units. This increase would be \$4,000 over a one-year period. Reinspection fees and sampling fees are added for additional services and are included in this estimate.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated effect on costs and/or economic benefits to grain elevator companies is estimated to be \$4,000 over a one-year period. Approximately 100 companies will be directly affected by the incremental increase in fees.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no estimated effect on competition and employment.

Bob Odom
Commissioner
0012#031

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Culture, Recreation and Tourism
Office of State Parks**

State Parks Overnight Facilities, Meeting Rooms,
Day Use, and Reservation Procedures
(LAC 25:IX.303-331 and 501-507)

The Office of State Parks proposes to amend LAC 25:IX.301 et seq. in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and the statutory provisions of R.S. 56:1681 et seq.

The amendments relate to a variety of issues at state parks including use of overnight facilities, meeting rooms, day use, and reservation procedures.

Title 25

CULTURAL RESOURCES

Part IX. Office Of State Parks

Chapter 3. Rules and Regulations

§303. Park Property and Environment

A. - F. ...

G. No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on any park. The display, possession, and/or use of metal detectors or other devices is prohibited. It is strictly forbidden to dig for or otherwise remove any historical feature, relic or artifact. Persons wishing to excavate and remove historical features by professional archaeological means for research purposes must request a permit from the Louisiana Archaeological Survey and Antiquities Commission. Applications for such permits must be made through the assistant secretary, office of state parks.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 16:1051 (December 1990), LR 26:25 (January 2000), LR 27:

§321. Fines and Enforcement of the Rules and Regulations

A. In addition to any other penalty provided by law, persons violating these rules and regulations are subject to administrative fines for each violation of not less than \$15 nor more than \$250 (R.S. 56:1689), eviction from the park, and/or restitution to the state for damages incurred. If an individual is delinquent in paying for damage incurred, the agency reserves the right to refuse privileges to that individual pending receipt of such restitution.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:27 (January 2000), LR 27:

§331. Overnight Use

A. - A.13. ...

B. Camping

1. With the exception of a campground host, overnight camping and group camp, lodge and cabin use are limited to 15 consecutive days. After 15 consecutive days of occupancy at a park, the visitor must vacate the park for seven consecutive days before occupancy may be resumed. At the site manager's discretion, and subject to availability, overnight camping may be extended on a weekly basis. No campsite may be vacated for longer than a 24-hour continuous period under any permit agreement.

2. - 4. ...

5. The following camping combinations are applicable only to Grand Isle State Park:

- a. one passenger vehicle and two tents (family unit only);
- b. one passenger vehicle and one camping trailer;
- c. one van-type camping vehicle and one tent;
- d. one van-type camping vehicle and one camping trailer.
- e. one pickup truck camper and one tent;
- f. one pickup truck camper and one camping trailer;
- g. one motorized camper (or bus) and one passenger vehicle.

h. In the north camping area, registered campers are allowed to bring a maximum of two vehicles and a maximum of six persons per campsite.

6. Beach campsites cannot be reserved.

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:28 (January 2000), LR 27:

Chapter 5. Procedures and Fees

§503. Fees and Exemptions; Day-Use

A. - F.1.c. ...

G. Meeting Rooms. Meeting rooms used to accommodate meetings and functions of private groups, clubs and other organizations are available during normal

park operating hours. Kitchen facilities may be used, if available. Meeting room rates are as follows:

- \$75 Type I e.g. Bayou Segnette, North Toledo Bend
- \$125 Type II e.g. Chemin-A-Haut, Chicot
- \$175 Type III e.g. Lake Fausse Pointe

H. Exemptions

1. repealed.

H.2. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:29 (January 2000), LR 27:

§504. Fees and Exemptions C Overnight Use

A. - B.3. ...

C. repealed.

D. - F.2. ...

G Group Camps. Group camps are available at certain parks for organized group use. The capacity, type of facility, and rates are as follows:

Classification	Overnight Rate	Maximum Capacity
Class III	\$300	100+
Class II	\$125	50+
Class I	\$75	30+

1. Group camps may be reserved for day or overnight use at a basic rate. In addition, the normal day-use entrance fee will be assessed each vehicle entering the group camp area.

2. Beds, kitchen and necessary cooking ware are furnished. User must furnish his own tableware (silver, dishes, glasses, etc.), bed linens, pillows, towels, and toilet necessities.

H. - H.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:30 (January 2000), LR 27:

§505 Reservation Policy

A. General Provisions

1. - 4. ...

5. A cancellation of a reservation initiated by park users is subject to a surcharge. The cancellation fee is a minimum of \$10 per facility. If the reservation is canceled within 14 days of the first day of intended use, the cancellation fee is the cost of one day's stay or \$10 per facility, whichever is more. A transfer of reservation dates will be treated as a cancellation and a new reservation, and is therefore subject to the cancellation surcharge. There is no charge to transfer a reservation from a facility to the same type of facility within a park.

6. In the event reservations must be canceled for maintenance or emergency reasons by park staff, the rental fee will be refunded in full. Requests for waivers of the cancellation fee must be made in writing to the assistant

secretary or his designee and will be granted only for extreme situations.

7. For cabins, lodges, group camps, rally shelters and campsites a two-day minimum reservation is required for weekends. The minimum may be met by reserving the facility on Friday and Saturday nights, on Saturday and Sunday nights or for all three nights. If facilities are not reserved in advance, they may be rented on weekends for one night to walk-up users using the facilities that day. Exceptions may be granted by the assistant secretary or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1693.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 14:772 (November 1988), LR 16:1051 (December 1990), LR 26:32 (January 2000), LR 27:

§507. Special Uses and Restrictions

A. - C.5. ...

D. Passenger Bus Restrictions

1. ...

2. Special Bus Use Permits. Any access to state parks by bus transportation on weekends or holidays during the period between Memorial Day and Labor Day will require a special bus use permit. The application for the permit must be submitted to the site manager at least three days prior to the proposed use date along with the group's proof of \$1,000,000 liability insurance and proof of \$500,000 automobile or bus liability insurance. Children traveling to state parks must be chaperoned by adults. The permit, if approved, does not cover other special day-use charges (rental pavilions, etc.).

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1681-1690.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Parks, LR 8:633 (December 1982), amended LR 12:89 (February 1986), LR 12:828 (December 1986), LR 26:32 (January 2000), LR 27:

All interested persons are invited to submit written comments on the proposed amended rules. Such comments should be submitted no later than January 22, 2001 at 4 p.m. to Dwight Landreneau, Assistant Secretary, Louisiana Office of State Parks, 1051 North Third Street, Suite 320, Baton Rouge, LA 70802.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: State Parks C Overnight Facilities, Meeting Rooms, Day Use, and Reservation Procedures

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated net costs or savings to state or local governmental units in the implementation of these rule, except the cost of printing this rule revision in the State Register, an estimated cost of \$120. As currently written, §504.G would require the development of new software for the Central Reservation System. Therefore it could be argued that by this amendment, the state is saving the cost of new software development. More precisely, the amendment allows the rate schedule to be consistent with all other facilities and to reflect the reality of facility availability.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant net effect on revenue collections of state or local governmental units is anticipated. The change in the rate schedule for meeting rooms should not result in net change in revenue collection.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No significant net costs and/or economic benefits to directly affected persons or nongovernmental groups are anticipated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No significant effect on competition and employment is anticipated.

Dwight Landreneau
Assistant Secretary
0012#021

Robert Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Tuition Opportunity Program for Students
(TOPS)CACT and SAT Qualifying Scores
(LAC 28:IV.301, 509, 903)

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS) (R.S. 17:3042.1 and R.S. 17:3048.1).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., January 20, 2001, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Mark S. Riley
Assistant Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Tuition Opportunity Program for
Students (TOPS)C High School Grade Point Average
Calculation**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
To date, one student previously awarded TOPS-Tech has qualified for a TOPS Opportunity award based on ACT score earned between high school graduation and July 1 of this year. Increased cost for the student to receive the Opportunity, rather than TOPS-Tech is \$1400 in FY 2000-2001. In future years, additional cost could be incurred due to the higher tuition cost for academic education and possible additional stipended costs

- for students who qualify. There is no way to estimate these costs in future fiscal years at this time.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections is anticipated to result from this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Students who have qualified for a TOPS-Tech award based on a test score earned prior to their high school graduation and who subsequently qualify for a higher award based on a test taken after graduation but before July 1 of that same year may receive the award for which they qualify, regardless of whether it is a TOPS Opportunity, Performance or Honors award.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated to result from this rule.

Mark S. Riley
Assistant Executive Director
0012#039

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Small Quality Generator Revisions
(LAC 33:V.Chapters 1, 3, 9, 11, 13, 15, 22,
30, 38, 39 40, 41, 43, and 49)(HW075F)

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.Chapters 1, 3, 9, 11, 13, 15, 22, 30, 38, 39, 40, 41, 43, and 49 (Log #HW075F).

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental

QualityC Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including "solid waste" and "hazardous waste," appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

[See Prior Text in A - D.5]

- a. Except as provided in Subsection D.5.b of this Section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in LAC

33:V.109 are not subject to any requirement of LAC 33:V.Chapters 9, 11, 13, or 49, or to the notification requirements of Subsection A of this Section, nor are such samples included in the quantity determinations of LAC 33:V.108 and 1109.E.7 when:

* * *

[See Prior Text in D.5.a.i - O.2.c.vi]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid And Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687 (September 1998), LR 24:1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:

§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

A. A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kg of hazardous waste in that month.

B. Except for those wastes identified in Subsections E, F, G, and J of this Section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under the notification requirements of LAC 33:V.105.A and Chapters 3 - 37, 41, 43, and 53, except for LAC 33:V.Chapter 31.Table 1, provided the generator complies with the requirements of Subsections F, G, and J of this Section.

C. When making the quantity determinations of this Section and LAC 33:V.Chapter 11, the generator must include all hazardous waste that it generates, except hazardous waste that:

1. is exempt from regulation under LAC 33:V.105.D.3 - 6 and 8, 109.Empty Container.1, and 4105.B; or
2. is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in LAC 33:V.109; or
3. is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under LAC 33:V.4115.B; or
4. is used oil managed under the requirements of LAC 33:V.4105.E and Chapter 40; or

5. is spent lead-acid batteries managed under the requirements of LAC 33:V.4145; or

6. is universal waste managed under LAC 33:V.105.D.7 and Chapter 38.

D. In determining the quantity of hazardous waste generated, a generator need not include:

1. hazardous waste when it is removed from on-site storage; or

2. hazardous waste produced by on-site treatment (including reclamation) of its hazardous waste, so long as the hazardous waste that is treated was counted once; or

3. spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

E. If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under the notification requirements of LAC 33:V.105.A and LAC 33:V.Chapters 3 - 37, 41, 43, 51, and 53:

1. a total of one kg of acute hazardous wastes listed in LAC 33:V.4901.B, C, or E; or

2. a total of 100 kg of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in LAC 33:V.4901.B, C, or E.

[Comment: *Full regulation* means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

F. In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in Subsection E.1 or 2 of this Section to be excluded from full regulation under this Section, the generator must comply with the following requirements:

1. LAC 33:V.1103;

2. the generator may accumulate acute hazardous wastes on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in Subsection E.1 or 2 of this Section, all of those accumulated wastes are subject to regulation under the applicable notification requirements of LAC 33:V.105.A and LAC 33:V.Chapters 3 - 37, 41, 43, 51, and 53. The time period of LAC 33:V.1109.E, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

3. a conditionally exempt small quantity generator may either treat or dispose of its acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the United States, is:

a. permitted under 40 CFR 270 or LAC 33:V.Chapters 3 - 7;

b. in interim status under 40 CFR 270 and 265 or LAC 33:V.Chapters 3 - 7 and 43;

c. authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

d. permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR 258;

e. permitted, licensed, or registered by a state to manage nonmunicipal, nonhazardous waste and, if managed

in a nonmunicipal, nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5 - 257.30; or

f. a facility which:

i. beneficially uses or reuses, or legitimately recycles or reclaims, its waste; or

ii. treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

g. for universal waste managed under LAC 33:V.Chapter 38, a universal waste handler or destination facility subject to the requirements of 40 CFR 273 or LAC 33:V.Chapter 38.

G In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kg of hazardous waste during a calendar month to be excluded from full regulation under this Section, the generator must comply with the following requirements:

1. LAC 33:V.1103;

2. the conditionally exempt small quantity generator may accumulate hazardous waste on-site. If it accumulates at any time more than a total of 1000 kg of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of LAC 33:V.Chapter 11 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of LAC 33:V.Chapters 3 - 9, 13 - 37, 41, 43, 51, and 53, and the applicable notification requirements of LAC 33:V.105.A. The time period of LAC 33:V.1109.E for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kg; and

3. a conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the United States, is:

a. permitted under 40 CFR 270 or LAC 33:V.Chapters 3 - 7;

b. in interim status under 40 CFR 270 and 265 or LAC 33:V.Chapters 3 - 7 and 43;

c. authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

d. permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR 258;

e. permitted, licensed, or registered by a state to manage nonmunicipal, nonhazardous waste and, if managed in a nonmunicipal, nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5 - 257.30; or

f. a facility that:

i. beneficially uses or reuses, or legitimately recycles or reclaims, its waste; or

ii. treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

g. for universal waste managed under LAC 33:V.Chapter 38, a universal waste handler or destination facility subject to the requirements of 40 CFR 273 or LAC 33:V.Chapter 38.

H. Hazardous waste subject to the reduced requirements of this Section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this Section, unless the mixture meets any of the characteristics of hazardous waste identified in LAC 33:V.4903.

I. If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this Section, the mixture is subject to full regulation.

J. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to LAC 33:V.Chapter 40 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§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:

* * *

[See Prior Text]

*Empty Container*C

1. a. any hazardous waste remaining in either of the following is not subject to regulation under LAC 33:V.Chapters 1-29, 31- 38, 43, 49, or to the notification requirements of LAC 33:V.105.A:

* * *

[See Prior Text in Empty Container.1.a.i - Sludge Dryer]

*Small Quantity Generator*Ca generator who generates less than 1000 kg of hazardous waste in a calendar month.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), 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:

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§303. Overview of the Permit Program

* * *

[See Prior Text in A - E]

1. Owners and operators of existing TSD facilities must submit Part I of their permit application requirements listed in LAC 33:V.515 to the administrative authority no later than 30 days after the date they first become subject to the permitting standards set forth in LAC 33:V.Subpart 1. Generators generating greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month who treat, store, or dispose of these wastes on-site must submit a Part I RCRA permit application by March 24, 1987.

* * *

[See Prior Text in E.2 - Q]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 14:790 (November 1988), LR 16:220 (March 1990), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 21:564 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2466 (November 2000), LR 27:

§305. Scope of the Permit

* * *

[See Prior Text in A - C.1]

2. generators who accumulate hazardous waste in an environmentally sound manner, on-site for less than the time periods provided in LAC 33:V.1109.E;

* * *

[See Prior Text in C.3]

4. persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulation under LAC 33:V.105.D or 108 (small generator exemption);

* * *

[See Prior Text in C.5 - H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 23:567 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1105 (June 1998), LR 24:1690 (September 1998), LR 24:1759 (September 1998), LR:25:435 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 9. Manifest System for TSD Facilities

§909. Unmanifested Waste Report

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in LAC 33:V.1307.E.2, and if the waste is not excluded from the manifest requirements by LAC 33:V.108, then the owner or operator must prepare and submit a single copy of a report to the administrative authority within 15 days after receiving the waste. The

unmanifested waste report must be submitted to the Office of Environmental Services, Environmental Assistance Division. Such report must be designated "Unmanifested Waste Report" and include the following information:

* * *

[See Prior Text in A - G]

[Comment: Small quantities of hazardous waste are excluded from regulation under LAC 33:V.Chapters 9, 15 -21, 23 - 29, and 31 - 37 and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the department suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the department suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 17:364 (April 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2469 (November 2000), LR 27:

Chapter 11. Generators

§1101. Applicability

* * *

[See Prior Text in A - H]

I. LAC 33:V.108.C and D must be used to determine the applicability of provisions of this Chapter that are dependent on calculations of the quantity of hazardous waste generated per month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998), LR 24:1106 (June 1998), LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1107. The Manifest System

* * *

[See Prior Text in A - A.3]

4. The requirements of this Section do not apply to hazardous waste produced by generators of greater than 100 kg, but less than 1000 kg, in a calendar month where:

a. the waste is reclaimed under a contractual agreement pursuant to which:

i. the type of waste and frequency of shipments are specified in the agreement;

ii. the vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

b. the generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

* * *

[See Prior Text in A.5 - D.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR

10:496 (July 1984), LR 12:319 (May 1986), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:

§1109. Pre-Transport Requirements

* * *

[See Prior Text in A - E.6]

7. A generator who generates greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

* * *

[See Prior Text in E.7.a]

b. the generator complies with the requirements of LAC 33:V.4438;

c. the generator complies with the requirements of LAC 33:V.1109.E.1.c and d; the requirements of LAC 33:V.Chapter 43.Subchapter B; and the requirements of LAC 33:V.2245.D;

* * *

[See Prior Text in E.7.d - d.iv.(c)(v)]

e. the quantity of waste accumulated on-site never exceeds 6000 kg.

8. A generator who generates greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month and who must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that the generator complies with the requirements of Subsection E.7 of this Section.

9. A generator who generates greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if the generator must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of LAC 33:V.Chapters 9, 15 - 21, 23 - 29, 31 - 37, 43, and 51 and the permit requirements of LAC 33:V.Chapters 3 - 7 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the administrative authority if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the administrative authority on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109

(October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:

' 1111. Recordkeeping and Reporting

* * *

[See Prior Text in A - B.2]

C. Exception Reporting

1. A generator of greater than 1000 kg of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

2. A generator of greater than 1000 kg of hazardous waste in a calendar month must submit an Exception Report to the Office of Environmental Services, Environmental Assistance Division if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

* * *

[See Prior Text in C.2.a -b]

3. A generator of greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Office of Environmental Services, Environmental Assistance Division.

Note: The submission to the administrative authority need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

* * *

[See Prior Text in D]

E. Special Requirements for Generators of Between 100 and 1000 kg/month. A generator of greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month is subject only to the following requirements in this Section:

1. Subsection A.1, 3, and 4 of this Section, recordkeeping;

2. Subsection C.3 of this Section, exception reporting; and

3. Subsection D of this Section, additional reporting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 17:365 (April 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:

§1113. Exports of Hazardous Waste

* * *

[See Prior Text in A - G.1.d]

e. except for hazardous waste produced by exporters of greater than 100 kg, but less than 1000 kg, in a calendar month, unless provided in accordance with LAC 33:V.1111.B in even numbered years:

[See Prior Text in G.1.e.i - f]

2. Reports shall be sent to the administrative authority of the Louisiana Department of Environmental Quality.

[Note: This does not relieve the regulated community from the requirement of submitting annual reports in accordance with 40 CFR 262.56 to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A) Environmental Protection Agency, 1200 Pennsylvania Ave, Washington, DC 20460.]

[See Prior Text in H - I.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:

Chapter 13. Transporters

§1307. The Manifest System

[See Prior Text in A - G.4]

H. A transporter transporting hazardous waste from a generator who generates greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month need not comply with the requirements of this Section or those of LAC 33:V.1311 provided that:

1. the waste is being transported in accordance with a reclamation agreement as provided for in LAC 33:V.1107.A.4;

2. the transporter records, on a log or shipping paper, the following information for each shipment:

- i. the name, address, and EPA identification number of the generator of the waste;
- ii. the quantity of waste accepted;
- iii. all DOT-required shipping information; and
- iv. the date the waste is accepted;

3. the transporter carries this record when transporting waste to the reclamation facility; and

4. the transporter retains these records for a period of at least three years after termination or expiration of the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 15. Treatment, Storage, and Disposal Facilities

§1501. Applicability

[See Prior Text in A - C]

1. the owner or operator of a facility permitted, licensed, or registered to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by LAC 33:V.108;

[See Prior Text in C.2 - H.13]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 23:565 (May 1997), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1106 (June 1998), LR 24:1694 (September 1998), LR 24:1759 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:277 (February 2000), LR 27:

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

§2201. Purpose, Scope, and Applicability

[See Prior Text in A - I.3]

4. waste generated by small quantity generators of less than 100 kg of nonacute hazardous waste or less than 1 kg of acute hazardous waste per month, as defined in LAC 33:V.108;

[See Prior Text in I.5 - 5.e]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:398 (May 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:300 (February 1998), LR 24:666 (April 1998), LR 24:1107 (June 1998), LR 24:1724 (September 1998), LR:1759 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 27:

§2205. Storage of Prohibited Wastes

[See Prior Text in A]

1. A generator may store such wastes in tanks, containers, or containment buildings on-site solely for the purpose of accumulating such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements of LAC 33:V.1109.E, Chapters 9, 15, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 35, 37, 43, and 51.

[See Prior Text in A.2 - H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:220 (March 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1724 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:280 (February 2000), LR 27:

§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements

[See Prior Text in A - F]

G If a generator determines that he is managing a prohibited waste that is excluded from the definition of hazardous or solid waste or exempted from regulation under LAC 33:V.Chapter 1 or 41 subsequent to the point of generation (including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act (CWA) as specified in LAC 33:V.105.D.1.b, or that are CWA-equivalent, or are managed in an underground injection well regulated by the Solid Disposal Waste Act, SDWA), the generator must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from the regulation under LAC 33:V.Subpart 1, and the disposition of the waste, in the facility's on-site file.

H. Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced in accordance with this Section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority. The requirements of this Paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under LAC 33:V.Chapter 1 or 41, or exempted from regulation under LAC 33:V.Subpart 1, subsequent to the point of generation.

[See Prior Text in I - K]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1728 (September 1998), LR 25:447 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), LR 27:

Subchapter B. Hazardous Waste Injection Restrictions

§2249. Purpose, Scope, and Applicability

[See Prior Text in A - C.2]

3. if the waste is generated by a conditionally exempt small quantity generator, as defined in LAC 33:V.108.

[See Prior Text in D - D.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:22 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1800 (October 1999), LR 27:

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3001. Applicability

[See Prior Text in A - B.2]

3. hazardous wastes that are exempt from regulation under LAC 33:V.105.D and 4105.B.10-12, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under LAC 33:V.108; and

[See Prior Text in B.4 - F.1.c.Note]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:821 (September 1996), LR 22:835 (September 1996), LR 25:1466 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

§3017. Small Quantity On-Site Burner Exemption

[See Prior Text in A - A.4]

B. Mixing with Nonhazardous Fuels. If hazardous waste fuel is mixed with a nonhazardous fuel, the quantity of hazardous waste before such mixing is used to comply with Subsection A.1 of this Section.

C. Multiple Stacks. If an owner or operator burns hazardous waste in more than one on-site boiler or industrial furnace exempt under this Section, the quantity limits provided by Subsection A.1 of this Section are implemented according to the following equation:

$$\sum_{i=1}^n \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} \leq 1.0$$

where:

n = the number of stacks;

Actual Quantity Burned = the waste quantity burned per month in device "i";

Allowable Quantity Burned = the maximum allowable exempt quantity for stack "i" from the table in LAC 33:V.3017.A.1.

Note: Hazardous wastes that are subject to the special requirements for small quantity generators under LAC 33:V.108 may be burned in an off-site device under the exemption provided by LAC 33:V.3017, but must be included in the quantity determination for the exemption.

[See Prior Text in D - E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992),

amended LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 38. Universal Wastes

Subchapter A. General

§3801. Scope and Applicability

A. This Chapter establishes requirements for managing batteries, pesticides, thermostats, lamps, and antifreeze as described in LAC 33:V.3813. This Chapter provides an alternative set of management standards in lieu of regulations under LAC 33:V.Subpart 1.

* * *

[See Prior Text in B]

C. Conditionally exempt small quantity generator wastes that are regulated under LAC 33:V.108 and are also of the same type as the universal wastes defined in LAC 33:V.3813 may, at the generator's option, manage these wastes under the requirements of this Chapter.

D. Persons who commingle the wastes described in Subsections B and C of this Section, together with universal waste regulated under this Chapter, must manage the commingled waste under the requirements of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 24:1496 (August 1998), LR 24:1759 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 39. Reserved

§3901. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:237 (April 1987), LR 20:1109 (October 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

§3903. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:237 (April 1987), repromulgated LR 18:1256 (November 1992), amended LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2496 (November 2000), repealed LR 27:

§3907. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:1139 (December 1985), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2496 (November 2000), repealed LR 27:

§3911. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

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

Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 20:1109 (October 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

§3913. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:237 (April 1987), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

§3915. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:237 (April 1987), LR 16:220 (March 1990), repromulgated LR 18:1256 (November 1992), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1497 (August 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2496 (November 2000), repealed LR 27:

Chapter 40. Used Oil

Subchapter A. Materials Regulated as Used Oil

§4003. Applicability

This Section identifies those materials which are subject to regulation as used oil under this Chapter. This Section also identifies some materials that are not subject to regulation as used oil under this Chapter and indicates whether these materials may be subject to regulation as hazardous waste under this Subpart.

* * *

[See Prior Text in A - B.2.c]

3. Conditionally Exempt Small Quantity Generator Hazardous Waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under LAC 33:V.108 are subject to regulation as used oil under this Chapter.

* * *

[See Prior Text in C - I]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828 (September 1996), LR 22:836 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 25:481 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division LR 27:

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

Recyclable materials are subject to additional regulations as follows:

* * *

[See Prior Text in A - B.6]

7. Reserved

* * *

[See Prior Text in B.8 - 10]

11. oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under LAC 33:V.4005.

* * *

[See Prior Text in C - F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), LR 24:1108 (June 1998), LR 24:1742 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 43. Interim Status

§4301. Purpose and Applicability

* * *

[See Prior Text in A - D]

E. The requirements of this Chapter apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in LAC 33:V.Chapter 22, and Chapter 22 standards are material conditions or requirements of the LAC 33:V.Chapter 43 interim status standards.

* * *

[See Prior Text in F - I]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998), LR 25:482 (March 1999), LR 25:1466 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2498 (November 2000), LR 27:

§4313. General Waste Analysis

* * *

[See Prior Text in A]

B. The analysis may include data developed under LAC 33:V.Chapters 1, 31, 41, 49 and existing published or documented data about the hazardous waste or about waste generated from similar processes.

* * *

[See Prior Text in Comment- F.3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:1057 (December 1990), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR

24:1743 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

Subchapter I. Tanks

§4438. Special Requirements For Generators of Between 100 and 1,000 kg/month That Accumulate Hazardous Waste in Tanks

A. The requirements of this Section apply to small quantity generators of more than 100 kg, but less than 1,000 kg, of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200 miles), and do not accumulate over 6,000 kg on-site at any time.

B. Generators of between 100 and 1,000 kg/month hazardous waste must comply with the following general operating requirements:

1. treatment or storage of hazardous waste in tanks must comply with LAC 33:V.4321.B;
2. hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life;
3. uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank; and
4. where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

[Note: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.)]

C. Generators of between 100 and 1,000 kg/month accumulating hazardous waste in tanks must inspect, where present:

1. discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day to ensure that it is in good working order;
2. data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;
3. the level of waste in the tank at least once each operating day to ensure compliance with Subsection B.3 of this Section;
4. the construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and
5. the construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

[Note: As required by LAC 33:V.4317.C, the owner or operator must remedy any deterioration or malfunction he finds.]

D. Generators of between 100 and 1,000 kg/month accumulating hazardous waste in tanks must, upon closure

of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with LAC 33:V.109.Hazardous Waste.4 or 5, that any solid waste removed from the tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of LAC 33:V.Chapters 11, 13, and 43.

E. Generators of between 100 and 1,000 kg/month must comply with the following special requirements for ignitable or reactive waste:

- 1. ignitable or reactive waste must not be placed in a tank, unless:
 - a. the waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under LAC 33:V.4903.B or D, and LAC 33:V.4321.B is complied with; or
 - b. the waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or
 - c. the tank is used solely for emergencies.
- 2. the owner or operator of a facility that treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 - 2-6 of the National Fire Protection Association's *Flammable and Combustible Liquids Code*, (1977 or 1981) (incorporated by reference, see LAC 33:V.110).

F. Generators of between 100 and 1,000 kg/month must comply with the following special requirements for incompatible wastes:

- 1. incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank, unless LAC 33:V.4321.B is complied with; and
- 2. hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material, unless LAC 33:V.4321.B is complied with.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 49. Lists of Hazardous Wastes
§4901. Category I Hazardous Wastes

* * *

[See Prior Text in A - Comment]

Hazard codes are defined as follows for the listed hazardous wastes.

Ignitable waste	(I)
Corrosive waste	(C)
Reactive waste	(R)
Toxicity Characteristic waste	(E)
Acute hazardous waste or acutely hazardous waste	(H)
Toxic waste	(T)

1. Each hazardous waste listed in this Chapter is assigned an EPA Hazardous Waste number, which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 or 105.A of the act and certain recordkeeping and

reporting requirements under LAC 33:V.Chapters 3-29, 31-38, and 43.

2. The following hazardous wastes listed in LAC 33:V.4901.B and C are subject to the exclusion limits for acutely hazardous wastes established in LAC 33:V.108: EPA Hazardous Wastes Numbers F020, F021, F022, F023, F026, and F027.

* * *

[See Prior Text in B - D.4.Comment]

E. The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in LAC 33:V.4901.D.1-4 are identified as acute hazardous wastes (H) and are subject to the small quantity exclusions defined in LAC 33:V.108.E. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Table 3.

* * *

[See Prior Text in E.Comment- Table 3.Note 1]

F. Commercial chemical products or manufacturing chemical intermediates or off-specification commercial chemical products referred to in LAC 33:V.4901.D.1-4 are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity generator exclusion defined in LAC 33:V.108.A and G. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Table 4.

[Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is listed only for toxicity.]

* * *

[See Prior Text in Table 4 - G.Table 6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

§4907. Criteria for Listing Hazardous Waste

* * *

[See Prior Text in A - B]

C. the administrative authority shall use the criteria for listing specified in this Chapter to establish the exclusion limits referred to in LAC 33:V.108.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:478 (May 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by HW075F. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW075F.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

The proposed rule will make Louisiana's classification and hazardous waste management requirements for small quantity generators equivalent to federal requirements. Louisiana's present classification system for small quantity generators of hazardous waste differs from the EPA small quantity generator classification system. The differences have resulted in confusion and unnecessary paperwork, with no environmental benefit. The basis and rationale for this rule are to be equivalent to federal regulations.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Small Quantity Generator Revisions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs or savings to state or local governmental units are expected as a result of this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units as a result of implementation of this rule. This rule, together with HW075L, which is being

concurrently promulgated, will re-instate the notification and the annual \$50 fee requirements under the present regulation

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The majority of conditionally exempt small quantity generators, that would be affected by this rule, are small businesses. These businesses would realize a small savings from the elimination of paperwork involved with preparation of the manifest and annual report, training expenses for staff attending annual report workshops, and the mailing costs for the manifest and annual report.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment are not expected to be significantly effected as a result of the implementation of this rule.

James H. Brent, Ph.D.
Assistant Secretary
0012#026

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Small Quantity Generator Revisions
(LAC 33:V.108, 1109, and 5137)(HW075L)

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.Chapters 1, 11, and 51 (Log #HW075L).

Rule HW075F, which is being proposed concurrent with this rule (HW075L), changes the categories of hazardous waste generators to be equivalent to the federal regulations and also makes other revisions to the regulations to make them equivalent to the federal regulations. This rule, HW075L, reinstates the existing requirements that conditionally exempt small quantity generators (presently Louisiana small quantity generators) notify as generators of hazardous waste and pay a \$50 annual fee. The Administrative Procedure Act requires that the department adopt federal language separately from non-federal language. This rule, HW075L, will reinstate language that would be lost if the department were to adopt the federally-equivalent language in HW075F without this companion rule. Preserving existing language will ensure that the department continues to be notified of the activity of all hazardous waste generators and can, thus, continue to effectively ensure that wastes are being handled in a manner that is protective of human health and the environment. The basis and rationale for this rule are to ensure that the existing hazardous waste program will not be compromised due to the proposed changes in the HW075F package. This rule will allow the agency to continue to receive the notification forms and fees for hazardous waste activity within the state.

This proposed rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report

regarding environmental/health benefits and social/economic costs is required. 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

Chapter 1. General Provisions and Definitions

§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

* * *

[See New Text in F Package in A]

B. Except for those wastes identified in Subsections E, F, G, and J of this Section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Chapters 3 - 37, 41, 43, and 53, except for LAC 33:V.Chapter 31.Table 1, provided the generator complies with the requirements of Subsections F, G, and J of this Section.

* * *

[See New Text in F Package in C - F.3.f.ii]

g. for universal waste managed under LAC 33:V.Chapter 38, a universal waste handler or destination facility subject to the requirements of 40 CFR 273 or LAC 33:V.Chapter 38;

4. notify the department in accordance with LAC 33:V.105.A; and

5. any and all fees required to be paid by conditionally exempt small quantity generators in accordance with LAC 33:V.5137 must be paid.

* * *

[See New Text in F Package in G - G.3.f.ii]

g. for universal waste managed under LAC 33:V.Chapter 38, a universal waste handler or destination facility subject to the requirements of 40 CFR 273 or LAC 33:V.Chapter 38;

4. notify the department in accordance with LAC 33:V.105.A; and

5. any and all fees required to be paid by conditionally exempt small quantity generators in accordance with LAC 33:V.5137 must be paid.

* * *

[See New Text in F Package in H - J]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

Chapter 11. Generators

§1109. Pre-Transport Requirements

* * *

[See Amended Text in F Package in A - E.7.d.iv.(c).(v)]

e. the quantity of waste accumulated on-site never exceeds 6000 kg;

f. any and all fees required to be paid by generators must be paid.

* * *

[See New Text in F Package in E.8 - 9]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:

Chapter 51. Fee Schedules

§5137. Conditionally Exempt Small Quantity Generator Fee

A. Conditionally exempt small quantity generators (see LAC 33:V.108) shall pay a fee of \$50 per year to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 14:622 (September 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by HW075L. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW075L.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Small Quantity Generator Revisions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
No implementation costs or savings to state or local governmental units are expected as a result of this rule
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There should be no effect on revenue collections of state or local governmental units as a result of implementation of this rule. This rule will allow the state of Louisiana to continue to require the fees that are currently being paid to the agency and which are not included under the companion rule HW075F
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This rule will have no economic impact on conditionally-exempt small quantity generators as they will continue to pay the same fee that they paid when they were categorized, by the state, as small quantity generators.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Competition and employment are not expected to be significantly affected as a result of the implementation of this rule.

James H. Brent, Ph.D.
Assistant Secretary
0012#026

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Criteria and Designated Uses for Poydras-Verret and Bayou Ramos Swamp (LAC 33:IX.1113)(WP036)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.1113.C.6, Table 1 and 1123.C.3, Table 3 (Log #WP036).

Site specific criteria and designated uses have been established for Poydras-Verret Marsh Wetland based on a scientific study conducted from the summer of 1995 through the summer of 1997, and for Bayou Ramos Swamp based on an 18-month characterization study conducted from the spring of 1995 through the summer of 1996. Results for each study are summarized in the Use Attainability Analysis (UAA) reports for the Poydras-Verrett Marsh Wetland and

for Bayou Ramos Swamp. Two new subsegments and criteria are being proposed. Water quality management subsegment has been delineated as 041809, Poydras-Verrett Marsh Wetland, located 1.5 miles north of St. Bernard, Louisiana in St. Bernard Parish, south of Violet Canal and northeast of Forty Arpent Canal. Another subsegment is delineated as 120208 for Bayou Ramos Swamp, a forested wetland located 1.25 miles north of Amelia, Louisiana in St. Mary Parish, south of Lake Palourde. Both of these wetlands are classified as naturally dystrophic water bodies (LAC 33:IX.1109.C.3). Wetland faunal assemblages for fish and macroinvertebrates, and above-ground wetland productivity (tree, grass, and/or marsh grass productivity), are determined to be the appropriate criteria for the Poydras-Verret Marsh Wetland (041809). Faunal species diversity and abundance, naturally occurring litter fall or stem growth, and the dominance index or stem density of bald cypress are determined to be the appropriate criteria for the Bayou Ramos Swamp (120208). Designated uses are secondary contact recreation and fish and wildlife propagation. All other general and numerical criteria not specifically excepted in LAC 33:IX.1123, Table 3, shall apply. In addition, footnote numbers will be corrected for 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) in LAC 33:IX.1113.C.6, Table 1. A superfluous footnote will be removed from the Toxic Substance column. Also, the footnote number in the Human Health Protection for Drinking Water Supply column will be changed to reflect the appropriate footnote reference. The basis and rationale for this proposed rule are to establish site specific criteria and designated uses for the Poydras-Verret Marsh Wetland (subsegment 041809) and for Bayou Ramos Swamp (subsegment 120208) developed as a result of the UAAs conducted for the sites.

This proposed rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part IX. WATER QUALITY REGULATIONS

Chapter 11. Surface Water Quality Standards

§1113. Criteria

* * *

[See Prior Text in A – C.6.e]

f. The use of clean or ultra-clean techniques may be required to definitively assess ambient levels of some pollutants (e.g., EPA method 1669 for metals) or to assess such pollutants when numeric or narrative water quality standards are not being attained. Clean and ultra-clean techniques are defined in LAC 33:IX.1105.

TABLE 1 NUMERICAL CRITERIA FOR SPECIFIC TOXIC SUBSTANCES (In micrograms per liter (µg/L) or parts per billion (ppb) unless designated otherwise)						
Toxic Substance	Aquatic Life Protection				Human Health Protection	
	Freshwater		Marine Water		Drinking Water Supply ¹	Non-Drinking Water Supply ²
	Acute	Chronic	Acute	Chronic		
Pesticides and PCB's *** [See Prior Text in Aldrin – Hexachlorobutadiene ⁶]						
Other Organics						
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)	--	-	--	--	0.71 ppq ⁹	0.72 ppq
Metals and Inorganics *** [See Prior Text in Arsenic - Cyanide]						

[See Prior Text in A - C.2]

[See Prior Text in Note 1 – Table 1-A. Conversion Factors for Dissolved Metals⁴. Note d]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR25:2401 (December 1999), LR 26:2547 (November 2000), LR 27:

§1123 Numerical Criteria and Designated Uses

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "DESIGNATED USES."

- A – Primary Contact Recreation
- B – Secondary Contact Recreation
- C – Propagation of Fish and Wildlife
- L – Limited Aquatic Life and Wildlife Use
- D – Drinking Water Supply
- E – Oyster Propagation
- F – Agriculture
- G – Outstanding Natural Resource Waters

Numbers in brackets (e.g. [1]) – refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
Code	Stream Description	Designated Uses	Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
	ATCHAFALAYA RIVER BASIN (01)								
*** [See Prior Text in 010101 – 041808]									
041809	Poydras-Verret Marsh Wetland- forested and marsh wetland located 1.5 miles north of St. Bernard, Louisiana in St. Bernard Parish – south of Violet Canal, and northeast of Forty Arpent Canal	B C	[17]	[17]	[17]	[17]	2	[17]	[17]
*** [See Prior Text in 041901 – 120207]									
120208	Bayou Ramos Swamp Wetland – forested wetland located 1.25 miles north of Amelia, Louisiana in St. Mary Parish – south of Lake Palourde		[18]	[18]	[18]	[18]	2	[18]	[18]
*** [See Prior Text in 120301 – 120806]									

Endnotes:

[See Prior Text in [1] – [16]]

[17] Designated Naturally Dystrophic Waters Segment. The following criteria are applicable:

No more than 50% reduction in the wetlands faunal assemblage (total abundance, total abundance of dominant species, or the species richness of fish and macroinvertebrates, minimum of five replicate samples per site; p = 0.05.

No more than 20% reduction in the total above-ground wetland productivity as measured by tree, shrub, and/or marsh grass productivity.

[18] Designated Naturally Dystrophic Waters Segment. The following criteria are applicable:

No more than 20% decrease in naturally occurring litter fall or stem growth;

No significant decrease in the dominance index or stem density of bald cypress;

(c) No significant decrease in faunal species diversity and no more than a 20% decrease in abundance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30: 2074 (B) (1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1123 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 27:

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290

Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by WP036. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP036.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Criteria and Designated Uses for Poydras-Verret and Bayou Ramas Swamp

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
No significant effect of this proposed rule on state or local governmental expenditures is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant effect on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No significant costs and/or economic benefits to directly affected persons or non-governmental groups are anticipated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No significant effect on competition and employment is anticipated.

James H. Brent, Ph. D.
Assistant Secretary
0012#030

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Inactive and Abandoned Sites
(LAC 33:VI.Chapter 9)(IA003)

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 Inactive and Abandoned Sites regulations, LAC 33:VI.Chapter 9 (Log #IA003).

This rule will implement the Voluntary Investigation and Remedial Action Law, Act 1092 of the 1995 Regular Session of the Louisiana Legislature. The rule provides a mechanism by which persons may voluntarily remediate contaminated properties and receive from the state a release from liability for past contamination in the form of a Certificate of Completion. This release would also apply to future owners of the property. Fear of pollution liability prevents many prospective purchasers, developers, etc., from undertaking cleanups at contaminated former industrial properties, effectively leaving these properties idle, unproductive, and unremediated. This rule will provide a mechanism to promote the remediation and re-use of such properties. Act 1092 of the 1995 Louisiana Legislature authorizes the department to promulgate regulations to provide for the return of commercial and industrial sites to productive use after remediation by the limitation of liability to landowners who voluntarily clean up contaminated sites. The basis and rationale for this proposed rule are to provide a mechanism to promote assessment, remediation, and re-use of contaminated properties.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. 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 VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation

Chapter 9. Voluntary Remediation

§901. Authority and Purpose

These regulations are established by the Department of Environmental Quality in accordance with R.S. 30:2001 et seq., in particular, R.S. 30:2285 et seq. The purpose of these regulations is to promote the voluntary assessment, remediation, and sustainable reuse of contaminated properties, while protecting public health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§903. Definitions

A. The following definitions apply to terms used in this Chapter. Except as provided in this Section, the terms in this Chapter retain the definitions provided in LAC 33:VI.117.

Applicant—a person who has submitted an application, as described in LAC 33:VI.911, to participate in the voluntary remediation program.

Application—a submission to the department, as described in LAC 33:VI.911, for participation in the voluntary remediation program.

Certificate of Completion—written approval for a specific voluntary remediation site issued by the administrative authority to a person who has undertaken and completed a voluntary remedial action at the site in accordance with a previously-approved remedial action plan and that achieved the remedial action goals in the plan. Upon issuance, this approval provides release from liability in accordance with LAC 33:VI.907.

Nonresponsible Person—a person who is not a responsible person as defined in this Section.

Partial Voluntary Remedial Action—a voluntary remedial action for which not all discharges or disposals or threatened discharges or disposals at a voluntary remediation site are removed or remediated (e.g., soils are remediated, but groundwater is not, or only a portion of the site is remediated). Partial voluntary remedial actions must be consistent with RECAP, and any reuse of the site must not pose a significant threat to public health, safety, and welfare and the environment.

Responsible Person or Responsible Landowner—a person who is responsible under the provisions of R.S. 30:Chapter 12.Part 1 and LAC 33:Part VI for the discharge or disposal or threatened discharge or disposal of a hazardous substance or hazardous waste at a voluntary remediation site, except that, for the purposes of this Chapter, a person who owns or has an interest in a voluntary remediation site is generally not a responsible person or responsible landowner, unless that person:

- a. was engaged in the business of generating, transporting, storing, treating, or disposing of a hazardous substance or hazardous waste on or in the site, or knowingly permitted others to engage in such a business on the site;
- b. knowingly permitted any person to make regular use of the site for disposal of waste;
- c. knowingly permitted any person to use the site for disposal of a hazardous substance;
- d. knew or reasonably should have known that a hazardous substance was located in or on the site at the time right, title, or interest in the site was first acquired by the person and engaged in conduct associating that person with the discharge or disposal; or
- e. took action that significantly contributed to the discharge or disposal after that person knew or reasonably should have known that a hazardous substance was located in or on the site.

Voluntary Remedial Action—risk-based cleanup of a voluntary remediation site performed in accordance with an approved voluntary remedial action plan. Unless specified as a partial voluntary remedial action, all discharges or disposals or threatened discharges or disposals are removed

or re mediated. Voluntary remedial actions must be consistent with RECAP.

Voluntary Remediation—participation in the voluntary remediation program, including application, remedial investigation, remedial action, and receipt of certificate of completion.

Voluntary Remediation Program—program operated in accordance with R.S. 30:Chapter 12.Part 2 and this Chapter, under which persons may apply to the department to investigate, perform voluntary remedial actions at, and receive Certificates of Completion for voluntary remediation sites.

Voluntary Remediation Site or Site—area of immovable property that is clearly identified by survey and legal description at which a voluntary remedial action is to be performed, is being performed, or has been performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§905. Eligibility

A. Eligible Sites. All sites shall be eligible for voluntary remediation, except for the following:

1. permitted hazardous waste management units (HWMU) regulated under LAC 33:Part V or federal hazardous waste regulations (if the HWMU is located within a larger site, then only that portion of the site inside the HWMU boundary is ineligible);
2. sites that have been proposed in the *Federal Register* to be placed on the National Priorities List (however, sites that are proposed to be placed on the National Priorities List, but which are determined not to be appropriate for listing, will become eligible if not otherwise ineligible);
3. sites that have been placed on the National Priorities List (however, such sites become eligible if they are subsequently removed from the National Priorities List and are not otherwise ineligible);
4. trust-fund-eligible underground storage tank systems, as defined in and regulated by LAC 33:Part XI; and
5. sites that have pending, unresolved federal environmental enforcement actions (not including simple cost recovery actions) that are related to the proposed voluntary remediation.

B. Eligible Persons

1. All persons shall be eligible to receive Certificates of Completion after completing approved voluntary remedial actions, except as otherwise provided in this Chapter.
2. Nonresponsible persons, as defined in this Chapter, are eligible to receive Certificates of Completion for partial voluntary remedial actions. Responsible persons, as defined in this Chapter, are not eligible to receive Certificates of Completion for partial voluntary remedial actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§907. Liability and Exemptions from Liability

A. Persons Exempt from Liability. Following a completed voluntary remedial action and issuance of a Certificate of Completion, the following persons shall be

exempt from liability provided in R. S. 30:Chapter 12.Part 1 and LAC 33:Part VI:

1. the person who undertook and completed the voluntary remedial action at the voluntary remediation site;
2. the owner of the voluntary remediation site, if he is not a responsible person;
3. a person who acquires all or part of the voluntary remediation site;
4. a successor or assignee of any person to whom the liability exemption applies; and
5. a person who provides financing for the implementation of the voluntary remedial action plan or for the development of the voluntary remediation site in accordance with the applicable use restrictions.

B. Persons Not Exempt from Liability. Notwithstanding Subsection A of this Section, the exemption from liability provided in this Chapter does not apply to:

1. a person who aggravates or contributes to a discharge or disposal or threatened discharge or disposal that was not remedied under an approved voluntary remedial action plan;
2. a person who was a responsible person under R.S. 30:Chapter 12.Part 1 and LAC 33:Part VI for a discharge or disposal or threatened discharge or disposal that was identified in the approved voluntary remedial action plan before taking an action that would have made the person subject to the exemptions under Subsection A.2-5 of this Section; or
3. a person who obtains approval of a voluntary remedial action plan by fraud or misrepresentation or by knowingly failing to disclose material information, or who knows that the approval was so obtained before taking an action that would have made the person subject to the exemptions from liability under Subsection A of this Section.

C. Performance Liability. Persons specified in Subsection A of this Section shall not be liable for aggravating or contributing to any discharge or disposal or threatened discharge or disposal identified in an approved voluntary remedial action plan, for the purpose of Subsection B.1 of this Section, as a result of their performance of the remedial actions required in accordance with the plan and the direction of the administrative authority. Nothing in this Chapter relieves a person of any liability for failure to perform the work required by the plan in a workman-like manner and in accordance with generally accepted standards of performance and operation applicable to such remedial work.

D. Liability from Participation. No person who is not already liable for a site under R.S. 30:Chapter 12.Part 1 or LAC 33:Part VI shall incur such liability from simply having participated in the voluntary remediation program, except as provided in Subsection B.1 and C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§909. Voluntary Remedial Investigation and Remedial Action Requirements

A. Remedial Investigations. Voluntary remedial investigations shall be consistent with the methods and

processes provided by RECAP. Voluntary remedial investigations must include:

1. the determination of the nature and extent of potential threats to human health and the environment through data collection and site characterization; and
2. the development of remedial action goals.

B. Remedial Actions. Voluntary remedial actions shall protect human health and the environment and comply with the RECAP standards determined in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§911. Application Process

A. Voluntary Remedial Investigation Applications. Prior to performing a remedial investigation and submission of the application in Subsection B of this Section, the applicant may submit a Voluntary Remedial Investigation Application for review and approval by the administrative authority, which consists of the following:

1. a Voluntary Remedial Investigation Application Form VCP001, available from the Office of Environmental Assessment, Remediation Services Division and on the department website at www.deq.state.la.us, with required attachments, accompanied by the remedial investigation work plan review fee; and

2. a remedial investigation work plan, which shall conform to the site investigation requirements of RECAP and, at a minimum, include the following:

- a. identification of all data needs following the review of existing preliminary evaluation reports and other existing data;

- b. identification of all potential exposure pathways/receptors and associated data needs;

- c. identification of all potentially applicable, relevant, and appropriate local, state, and federal requirements and associated data needs;

- d. a site-specific health and safety plan including necessary training, procedures, and requirements;

- e. a site-specific sampling and analysis plan that includes the number, type, and location of all samples to be taken and the types of analyses to be conducted during the required site characterization activities; and

- f. a quality assurance/quality control plan that identifies the quality assurance objectives and the quality control procedures necessary to obtain data of a sufficient quality for the remedial investigation.

B. Voluntary Remediation Applications. Prior to implementation of a voluntary remedial action at a site, applicants must submit a Voluntary Remediation Application to the Office of Environmental Assessment, Remediation Services Division for review and final approval. The application shall consist of the following:

1. a Voluntary Remediation Application Form VCP002, available from the Office of Environmental Assessment, Remediation Services Division and on the department website at www.deq.state.la.us, with required attachments, accompanied by the remedial action plan review fee;

2. a voluntary remedial action plan that contains a remedial investigation report, which shall, at a minimum, include:

- a. the scope and description of the investigation;
- b. a site background summary;
- c. sampling and analysis results;
- d. identification of the sources of the release;
- e. identification of the horizontal and vertical extent of the contamination;
- f. proposed remedial action goals; and
- g. conclusions and recommendations for further action; and

3. a voluntary remedial action plan containing the remedial design and the remedial project plan. The remedial design shall implement the remedy that is being proposed in order to attain the remedial action goals. The remedial project plan shall include all tasks, specifications, and subplans necessary for the implementation of the remedial design, including construction and operation of the final remedy. The requirements for the remedial project plan include:

- a. a work plan, including:
 - i. a general description of the work to be performed and a summary of the engineering design criteria;
 - ii. maps showing the general location of the site and the existing conditions of the facility;
 - iii. a copy of any required permits and approvals;
 - iv. detailed plans and procedural material specifications necessary for the construction of the remedy;
 - v. specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods as required by the administrative authority;
 - vi. start-up procedures and criteria to demonstrate the remedy is prepared for routine operation; and
 - vii. additional information to address ARARs;
- b. a sampling and analysis plan;
- c. a quality assurance/quality control plan;
- d. a site-specific health and safety plan;
- e. a project implementation schedule;
- f. if deemed necessary by the administrative authority, an operation and maintenance plan for post-remedial management including, but not limited to:
 - i. the name, telephone number, and address of the person responsible for the operation and maintenance of the site;
 - ii. a description of all operation and maintenance tasks and specifications;
 - iii. all design and construction plans;
- iv. any applicable equipment diagrams, specifications, and manufacturer's guidelines;
 - v. an operation and maintenance schedule;
 - vi. a list of spare parts available at the site for repairs;
 - vii. a site-specific health and safety plan; and
 - viii. other information that may be requested by the administrative authority;
- g. if deemed necessary by the administrative authority, a monitoring plan for post-remedial management. This monitoring plan must include a description of provisions for monitoring of site conditions during the post-

remedial management period to prevent further endangerment to human health and the environment, including:

- i. the location of monitoring points;
- ii. the environmental media to be monitored;
- iii. the hazardous substances to be monitored and the basis for their selection;
- iv. a monitoring schedule;
- v. monitoring methodologies to be used (including sample collection procedures and laboratory methodology);
- vi. provisions for quality assurance and quality control;
- vii. data presentation and evaluation methods;
- viii. a contingency plan to address ineffective monitoring; and
- ix. provisions for reporting to the department on a semiannual basis including, at a minimum:
 - (a) the findings from the previous six months;
 - (b) an explanation of any anomalous or unexpected results;
 - (c) an explanation of any results that are not in compliance with the RECAP standards; and
 - (d) proposals for corrective action; and
- h. other information that may be required by the administrative authority. The department may allow information to be incorporated by reference to avoid unnecessary duplication.

C. Acceptance for Public Review

1. After a satisfactory review of the Voluntary Remediation Application and the incorporation of necessary modifications required by the administrative authority into the application, the administrative authority will accept the application for public review.

2. After the application is accepted for public review and before the beginning of the public comment period provided in Subsections D and F of this Section, the applicant shall provide the number of copies of the accepted application specified by the administrative authority to the Office of Environmental Assessment, Remediation Services Division.

3. The applicant shall also place copies of the accepted application in local public facilities, to be determined by the administrative authority (e.g., public library, local government office), near the voluntary remediation site.

D. Public Notice. Upon acceptance of the Voluntary Remediation Application, as set forth in Subsection C of this Section, the applicant must place a public notice of the proposed voluntary remedial action plan in the local newspaper of general circulation in the parish where the voluntary remediation site is located. The public notice shall be a single classified advertisement at least four inches by six inches in size in the legal or public notices section. The applicant must provide proof of publication of the notice to the Office of Environmental Assessment, Remediation Services Division prior to final approval of the plan. The public notice shall:

- 1. solicit comments, for a minimum of 30 days, on the voluntary remedial action plan from interested parties;
- 2. provide the names of all of the applicants and the physical location of the voluntary remediation site;

3. indicate that comments shall be submitted to the Office of Environmental Assessment, Remediation Services Division (including the division's contact person, mailing address, and physical address), as well as indicate the deadline for submission of comments;

4. indicate where copies of the proposed plan can be reviewed by the public; and

5. inform interested parties that they may request a public hearing on the voluntary remedial action plan.

E. Direct Notice to Landowners. Within five days of the public notice in Subsection D of this Section, the applicant must send a direct written notice of the voluntary remedial action plan to persons owning immovable property contiguous to the voluntary remediation site. This notice shall be sent to persons listed as owners of the property on the rolls of the parish tax assessor as of the date on which the voluntary remediation application is submitted. The notice must be sent by certified mail and contain the same information that is provided in the public notice. Return receipts or other evidence of the receipt of the direct notice must be provided to the Office of Environmental Assessment, Remediation Services Division prior to final approval of the plan.

F. Public Hearing and Comment

1. Comments on the voluntary remedial action plan shall be accepted by the Office of Environmental Assessment, Remediation Services Division for a period of 30 days after the date of the public notice and shall be fully considered by the division prior to final approval of the plan. However, if the administrative authority determines a shorter or longer comment period is warranted, the administrative authority may provide for a shorter or longer comment period in the public notice described in Subsection D.1 of this Section. Also, the comment period provided in the public notice may be extended by the administrative authority if the administrative authority determines such an extension is warranted.

2. A public hearing may be held if the administrative authority determines a hearing is necessary based on public comments or other information.

3. The applicant shall be responsible for the actual costs of any such public hearing including, but not limited to, the costs of building rental, security, court reporter, and hearing officer.

G. Prior to final approval of the Voluntary Remediation Application, the administrative authority may require further modifications of the proposed plan if warranted based on issues brought forth by the public.

H. Upon final approval of the Voluntary Remediation Application, the administrative authority may include in the approval an acknowledgement that, upon certification of completion of the remedial actions, the applicant shall receive the exemption from liability provided for in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§913. Completion of Voluntary Remedial Actions

A. Implementation. Voluntary remedial actions must be performed in accordance with the voluntary remedial action plan approved by the administrative authority. Any

modification in the plan must be approved by the administrative authority in advance of implementation of the modification. Modifications that result in a fundamental change of the plan (e.g., less stringent cleanup standards or changes in remedial approach with greater local impact, such as bioremediation to incineration) must undergo the public notice and hearing procedure in LAC 33:VI.911 prior to approval and implementation.

B. Inspections. The department reserves the right to inspect and oversee voluntary remedial actions in accordance with LAC 33:VI.517.

C. Completion of Voluntary Remedial Actions

1. Upon completion of a voluntary remedial action, the applicant shall submit a voluntary remedial action report, which must include:

a. a general description of the remedial action activities conducted at the site;

b. a demonstration that the remedial actions have resulted in the attainment of the remedial action goals approved by the department in the Voluntary Remediation Application;

c. a description of the volume and final disposal or reuse location and a copy of any waste manifests or other documentation of the disposition for wastes or environmental media that were removed from the site;

d. documentation that any physical control and/or treatment system, or combination of physical controls and treatment systems, have been constructed or completed and are functioning as described in the remedial design and remedial project work plan; and

e. other information that may be required by the department.

2. After satisfactory completion of a voluntary remedial action demonstrating that the remedial action goals have been accomplished and approval of the voluntary remedial action report, the administrative authority shall issue a Certificate of Completion to the applicant.

3. Certificates of Completion that are issued to a responsible person for a voluntary remedial action in which a voluntary remediation site is remediated for industrial use are valid only as long as the use of the site is industrial. Furthermore, where the approved remedial action incorporates use restrictions, institutional controls, or engineering controls, the Certificate of Completion is subject to compliance with such use restrictions, institutional controls, or engineering controls.

D. Termination at Will. The applicant may terminate participation in the voluntary remediation program at any time and for any reason, provided that:

1. the applicant provides written notice to the Office of Environmental Assessment, Remediation Services Division at least 15 days in advance of the termination;

2. the applicant has reimbursed the department for any reasonable costs incurred by the department up through the time of termination; and

3. termination of participation does not pose an immediate threat to public health, safety, and welfare and the environment and does not substantially increase the cost of future remediation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§915. Additional Requirements for Partial Voluntary Remedial Actions

A. Criteria for Partial Remediation. The administrative authority may approve a Voluntary Remediation Application for partial voluntary remedial action submitted in accordance with LAC 33:VI.911, provided:

1. the applicant is a nonresponsible person;
2. the voluntary remedial action plan provides for all remedial actions necessary to allow for any proposed reuse or redevelopment of the site in a manner that does not pose a significant threat to public health, safety, and welfare and the environment;
3. the remedial action and the activities associated with any proposed reuse or redevelopment of the site will not:
 - a. aggravate or contribute to discharges or disposals or threatened discharges or disposals that are not required to be removed or remedied under the voluntary remedial action plan; and
 - b. interfere with or substantially increase the cost of future remedial actions to address the remaining discharges or disposals or threatened discharges or disposals; and
4. that prior to approval of the Voluntary Remediation Application, the owner of the voluntary remediation site agrees, in writing, to the following terms necessary to carry out remedial actions to address the remaining discharges or disposals or threatened discharges or disposals:
 - a. to cooperate with the administrative authority or his authorized representatives in taking actions necessary to investigate or address remaining discharges or disposals or threatened discharges or disposals, including:
 - i. providing access to the property to the administrative authority and his authorized representatives;
 - ii. allowing the administrative authority or his authorized representatives to undertake activities at the property, including placement of borings, wells, equipment, and structures on the property; and
 - iii. granting rights-of-way, servitudes, or other interests on the property to the department for any of the purposes provided in Subsection A.4.a.i or ii of this Section;
 - b. to avoid any action that interferes with the remedial actions in Subsection A.4.a of this Section; and
 - c. to impose restrictions on the future use of the property as provided in Subsection C of this Section.

B. Written Agreement. The written agreement provided for in Subsection A.4 of this Section shall be binding on the successors and assigns of the owner, and the owner shall record the agreement, or a memorandum approved by the administrative authority summarizing the agreement, with the clerk of court in the official records of the parish where the voluntary remediation site is located prior to the issuance of a Certificate of Completion for the site.

C. Future Use Restrictions for Voluntary Remediation Sites Subject to Partial Voluntary Remedial Actions

1. Use Restrictions Mandatory. No partial voluntary remedial action shall be approved and no Certificate of Completion shall be issued for the partial voluntary remedial action unless the owner of the voluntary remediation site imposes and records necessary restrictions on the future use of the site, as provided in this Subsection.

2. Determination of Use Restrictions. The administrative authority shall determine the appropriate restrictions on the future use of the site that are necessary to prevent a significant threat to the public health, safety, and welfare and the environment. The administrative authority may conduct public hearings in the parish where the site is located to determine the reasonableness and appropriateness of such restrictions.

3. Imposition and Recordation of Use Restrictions. The owner of the voluntary remediation site shall impose restrictions on the future use of the site, as determined by the administrative authority under Subsection C.2 of this Section, and shall record the use restrictions with the clerk of court in the official records of the parish in which the site is located prior to the issuance of a Certificate of Completion for the site.

4. Modification or Removal of Use Restrictions

a. Restrictions on the future use of the voluntary remediation site shall not be modified, canceled, or removed unless authorized in advance by the administrative authority.

b. The administrative authority shall not authorize the modification, cancellation, or removal of restrictions on the future use of the site unless the site is further remediated to remove or remedy the remaining discharges or disposals or threatened discharges or disposals under the requirements of this Chapter.

c. The administrative authority must conduct at least one public hearing in the parish in which the site is located at least 30, and not more than 60, days prior to authorizing the modification, cancellation, or removal of restrictions on the future use of the site as provided in Subsection C.4.a and b of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§917. Fees and Direct Cost Recovery

A. Fees

1. Voluntary Remedial Investigation Application Review Fee. Remedial investigation work plans submitted to the department for review must be accompanied by a \$500 review fee.

2. Voluntary Remediation Application Review Fee. Voluntary Remedial Action Applications must be accompanied by a \$500 review fee.

3. No application shall be accepted or reviewed unless accompanied by the appropriate review fee as required in Subsection A.1 and 2 of this Section.

B. Cost Recovery. Participants in the voluntary remediation program shall reimburse the department for actual direct costs associated with reasonable and appropriate oversight activities of the department conducted in accordance with this Chapter including, but not limited to, review, supervision, investigation, and monitoring activities.

1. Application review fees required by Subsection A of this Section, which are paid by the applicant, are subtracted from the actual direct costs for which the applicant is invoiced.

2. No certificate of completion shall be issued by the administrative authority unless the actual direct costs assessed by the department are paid in full by the applicant.

3. The department shall invoice the applicant for accrued actual direct costs (less any application review fees already paid) on a quarterly basis following the date of application. A final invoice shall be sent after the voluntary remedial action is completed and prior to issuance of a Certificate of Completion.

4. Payment shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address shown on the invoice.

5. Payment shall be made by the due date shown on the invoice.

a. Payments that are not received within 15 days of the due date will be assessed a late payment fee equal to five percent of the invoiced amount.

b. Payments not received within 30 days of the due date will be assessed a late payment fee of an additional five percent of the original invoiced amount.

c. Payments not received within 60 days of the due date will be assessed a late payment fee of an additional five percent of the original invoiced amount.

d. If payments are not submitted within 90 days of the due date, the department may suspend all work on the site until such time as payment is received by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§919. Record Retention

A. All data, reports, plans, drawings, correspondence, and other investigation and remediation records generated by applicants for voluntary remediation must be maintained by the applicants for at least three years after the date of issuance of the Certificate of Completion, or if no certificate is issued, for at least three years after termination of participation in the voluntary remediation program.

B. All data, reports, plans, drawings, correspondence, and other records generated during post-remedial management, as described in LAC 33:VI.911.B.3.f and g, must be maintained by the owner of the voluntary remediation site as long as post-remedial management is required. The owner of a voluntary remediation site undergoing post-remedial management must notify the subsequent owner of the site of these recordkeeping requirements.

C. The records required to be maintained in Subsection A and B of this Section must be made available to the department by the applicant or owner upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2285 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate,

contact Patsy Deaville at the address given below or at (225) 765-0399. All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by IA003. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of IA003.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Inactive and Abandoned Sites

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Existing staff and facilities will be used to implement this rule. No significant additional cost to the agency is anticipated. This estimate is based on existing staff being able to handle the expected response to this voluntary program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No negative effect on revenue collections by state or local governments is anticipated. Both state and local governments should see increased tax revenue collections due to the return of previously-idle contaminated properties to commerce.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this rule should result in a net economic benefit to affected persons or non-governmental groups by bringing underutilized properties back into commerce with the limitation of liability for future remedial costs. This should help to create jobs and stimulate business activity. No person is compelled by this rule to incur costs of cleanup, as participation is entirely voluntary.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule should help to increase employment by encouraging the cleanup and reuse of previously-contaminated and idle properties. This should stimulate business activity and create jobs. This rule is not anticipated to have a significant effect on competition.

James H. Brent, Ph.D.
Assistant Secretary
0012#028

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Requirements for Response Action Contractors
(LAC 33:XI.103, 1121, and Chapter 12)(UT007)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Underground Storage Tanks regulations, LAC 33:XI.103; 1121; and Chapter 12 (Log #UT007).

This proposed rule sets the qualifications, notification, annual update requirements, and removal, suspension, and revocation procedures for a person to become a Response Action Contractor (RAC). RAC status allows a person or firm to carry out actions in response to a discharge or release of motor fuel from an underground storage tank and be eligible for reimbursement under the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF). The rule also corrects typographical errors and establishes new definitions. For approximately 10 years the department has, by policy, been approving persons or firms as RACs. This action will put into regulation many of the provisions from the previous policy and also revise and add other requirements. This proposed rule is in response to R.S. 30:2195.10, which requires the department to promulgate rules and regulations for the approval and compensation of response action contractors. The basis and rationale for this proposed rule are to adhere to R.S. 30:2195.10.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part XI. Underground Storage Tank

Chapter 1. Program Applicability and Definitions

§103. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or 1303.

* * *

[See Prior Text]

Geologist—a person who is a graduate of an accredited institution of higher education who has successfully completed a minimum of 30 semester hours or 45 quarter hours of course work in the science of geology and has in his/her possession a minimum of a baccalaureate degree.

* * *

[See Prior Text]

Response Action—any activity, including but not limited to, assessment, planning, design, engineering, construction, operation of recovery system, or ancillary services that are carried out in response to any discharge or release or

threatened release of motor fuels into the groundwater or subsurface soils.

Response Action Contractor—a person who has been approved by the department and is carrying out any response action, including a person retained or hired by such person to provide specialized services relating to a response action, and who shall provide no more than 40 percent of all response actions, based on costs, relating to a particular underground storage tank site. This 40 percent does not include those costs associated with reimbursement application preparation or laboratory analyses. When emergency conditions exist as a result of a release from a motor fuel underground storage tank, this term shall also include any person performing department-approved emergency response actions during the first 72 hours following the release.

* * *

[See Prior Text]

Specialized Services—response action activities associated with the preparation of a reimbursement application, laboratory analyses, or any construction activity, construction of trenches, excavations, installing monitoring wells, conducting borings, heavy equipment work, surveying, plumbing, and electrical work that are carried out by a subcontractor hired or retained by a response action contractor in response to a discharge or release or threatened release of motor fuels into the groundwater or subsurface soils.

* * *

[See Prior Text]

Technical Services—assessment field activities oversight; all reporting, planning, designing, and operating of corrective action and remedial systems; specialized services oversight; and other services that require geological and engineering expertise carried out in response to a discharge or release of motor fuel from UST systems into soils, groundwater, or surface water.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:

Chapter 11. Financial Responsibility

§1121. Use of the Motor Fuel Underground Storage Tank Trust Fund

The administrative authority was authorized by R.S. 30:2194 - 2195.10 to receive and administer the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner or operator must be an "eligible participant," as defined in Subsection A of this Section. In addition, the owner or operator must use one of the other

mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the MFUSTTF.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

* * *

[See Prior Text]

Eligible Participant—any owner of an underground storage tank who has registered said tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, and has met the financial responsibility requirements imposed by Subsection B of this Section.

Motor Fuel Underground Storage Tank Ca UST used only to contain an accumulation of motor fuels

Substantial Compliance—the owner or operator of a UST system shall be considered to be in substantial compliance when he or she has registered that tank with the department in accordance with LAC 33:XI.301, has complied with the state and federal laws and regulations applicable to USTs and the rules and regulations adopted pursuant thereto, has met the financial responsibility requirements specified in Subsection B of this Section, and has promptly notified the administrative authority of any third-party claim or suit made against him or her.

Third-Party Claim—any civil action brought or asserted by any person against the secretary of the department and any owner of any underground storage tank for damages to person or property when damages are the direct result of the contamination of groundwater and/or subsurface soils by motor fuels released during operation of storage tanks that were being operated in substantial compliance as provided for in this Section. The term *damages to person* shall be limited to damages arising directly out of the ingestion or inhalation of petroleum constituents from water well contamination or inhalation of petroleum constituents seeping into homes or buildings, and the term *damages to property* shall be limited to the unreimbursed costs of a response action and the amount by which property is proven to be permanently devalued as a result of the release.

B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(3), MFUSTTF participants taking response actions must pay the following amounts before any disbursements are made from the fund:

* * *

[See Prior Text in B.1.a-4]

C. Conditions for Use of the MFUSTTF. Funds in the MFUSTTF shall be used under the following conditions:

1. Whenever the administrative authority determines that an incidence of groundwater or subsurface soils contamination resulting from the storage of motor fuels may pose a threat to the environment or to public health, safety, or welfare, and the owner or operator of the UST system has been found to be an eligible participant (as defined in LAC 33:XI.1121.A), the department shall obligate monies available in the MFUSTTF to provide for the following response actions:

* * *

[See Prior Text in C.1.a-c.i]

ii. Subject to the provisions of Subsection C.2 and 3 of this Section, the funds in the MFUSTTF shall be used to replace leaking USTs and attendant product piping if the tanks are of double-wall construction of continuous glass filament winding, are manufactured in Louisiana by a corporation whose domicile and corporate headquarters are in Louisiana, and comply with all applicable state and federal standards. Said funds shall be allocated on a match basis of 25 percent of the replacement cost of the leaking tanks and piping.

iii. The monies expended from the MFUSTTF for any of the above approved costs shall be spent only up to such sum as that which is necessary to satisfy petroleum UST financial responsibility requirements specified in LAC 33:XI.1107.

2. Whenever the department has incurred costs for taking response actions with respect to the release of motor fuels from a UST system, or the department has expended funds from the MFUSTTF for response costs or third-party liability claims, the owner or operator of the underground motor fuel storage tank shall be liable to the department for such costs only if the owner or operator was not in substantial compliance on the date of discharge of the motor fuels that necessitated the cleanup. Otherwise, liability is limited to the provisions contained in LAC 33:XI.1121.B. Nothing contained herein shall be construed as authorizing the expenditure from the MFUSTTF on behalf of any owner or operator of a UST system who is not an eligible participant on the last anniversary date of the MFUSTTF for any third-party liability.

3. If the administrative authority has expended funds on behalf of an owner or operator who was not in substantial compliance, and the MFUSTTF is entitled to reimbursement of those funds so expended, the administrative authority shall have the authority to, and is obligated to, use any and all administrative and judicial remedies that might be necessary for recovery of the expended funds plus legal interest from the date of payment by the administrative authority and all costs associated with the recovery of the funds.

4. The MFUSTTF may be used for reimbursement of any costs associated with the review of applications for reimbursement from the MFUSTTF, legal fees associated with the collection of costs from parties not in substantial compliance, audits of the MFUSTTF, and accounting and reporting regarding the uses of the MFUSTTF.

5. The MFUSTTF may be used to make payments to a third party who brings a third-party claim against any owner or operator of an underground motor fuel storage tank because of damages caused by a release into the groundwater or subsurface soils and who obtains a final judgment in said action enforceable in Louisiana against the owner or operator only if it has been satisfactorily demonstrated that the owner or operator was an eligible participant as defined in LAC 33:XI.1121.A when the release occurred. The indemnification limit of the MFUSTTF with respect to satisfaction of third-party claims shall be that which is necessary to satisfy the requirements of LAC 33:XI.Chapter 11.

D. Procedures for Disbursements from the MFUSTTF

1. Monies held in the MFUSTTF are disbursed by the administrative authority in the following manner:

* * *

[See Prior Text in D.1.a]

b. Cost-effective procedures, as established by the administrative authority, shall be implemented by eligible participants using MFUSTTF monies.

2. Payments are made to third parties who bring suit against the administrative authority in his or her official capacity as representative of the MFUSTTF and the owner or operator of an underground motor fuel storage tank who is an eligible participant as defined in LAC 33:XI.1121.A and such third party obtains a final judgment in that action enforceable in Louisiana. The owner or operator stated above shall pay the amount required by LAC 33:XI.1121.B toward the satisfaction of said judgment, and after that payment has been made, the MFUSTTF will pay the remainder of said judgment. The attorney general of the state of Louisiana is responsible for appearing in said suit for and on behalf of the administrative authority as representative of the MFUSTTF. The administrative authority as representative of the MFUSTTF is a necessary party in any suit brought by any third party that would allow that third party to collect from the MFUSTTF, and the administrative authority must be made a party to the initial proceedings. Payment shall be made to the third-party claimant only if the judgment is against an owner or operator who was an eligible participant on the date that the incident that gave rise to the claim occurred. The costs to the attorney general of defending these suits, or to those assistants that the administrative authority employs or the attorney general appoints to assist, shall be recovered from the MFUSTTF. If the MFUSTTF is insufficient to make payments when the claims are filed, such claims shall be paid in the order of filing when monies are paid into the MFUSTTF. Neither the amount of money in the MFUSTTF, the method of collecting it, nor any of the particulars involved in setting up the MFUSTTF shall be admissible as evidence in any trial in which suit is brought when the judgment rendered could affect the MFUSTTF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194 – 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:

Chapter 12. Requirements for Response Action Contractors who Assess and Remediate Motor Fuel Contaminated Sites Eligible for Cost Reimbursement in Accordance with the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF)

§1201. Scope

A. These requirements apply to persons engaged in release response action activities including, but not limited to, assessment, remedial planning, design, engineering, construction, and the operation of recovery systems or ancillary services that are carried out in response to any discharge or release or threatened release of motor fuel into the groundwater or subsurface soils, and who have been hired by an owner or operator who seeks and is eligible for

reimbursement for such services under the MFUSTTF, hereinafter referred to as the Tank Trust Fund (TTF).

B. Effective July 15, 1988, the Tank Trust Fund required that Response Action Contractors (RACs) be approved by the department. Any RAC performing UST site work due to a release eligible for Tank Trust Fund participation must meet standards approved by the department, and its name must appear on the RAC list maintained by the department. Only RACs appearing on the list at the time the work was performed are eligible for reimbursement from the TTF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1203. Prohibitions

A. Twelve months after promulgation of these regulations, [date to be inserted], no person shall conduct a response action at a UST site unless the person has met the standards for the qualification of a RAC, as defined herein, and appears on the approved current RAC listing. These RACs shall be approved for RAC listing by the administrative authority. The MFUSTTF Advisory Board (hereinafter referred to as the "Board") may recommend to the administrative authority at any time that RACs be added or deleted from the list.

B. Persons performing technical services, as defined in LAC 33:XI.103, must be RACs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1205. Qualifications

A. In order to be listed by the department as an approved RAC for work that is eligible for Tank Trust Fund reimbursement, persons must submit, on a department-prescribed application form, documentation demonstrating and verifying that they meet the following minimum requirements:

1. the applicant must be licensed by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities. A copy of the valid, unexpired license must be provided in the name of the applicant to be placed on the RAC list;

2. the applicant must have a minimum of \$1 million of contractor's general liability insurance and a minimum of \$1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities. A valid, unexpired copy of the certificates of insurance coverage must be provided in the name of the applicant to be placed on the RAC list and with the department listed as an additional insured. Certificate of insurance shall provide that the insurer shall give 30 days notice of cancellation to all insured;

3. the applicant's employees must comply with applicable Occupational Safety and Health Administration (OSHA) training and certification requirements. A written statement indicating compliance must be provided;

4. the applicant must have either a geologist or a Louisiana registered professional engineer on staff;

5. the applicant's employees must be able to begin work at any site within 72 hours of authorization from an eligible Tank Trust Fund participant. A written statement indicating compliance must be provided; and

6. the applicant must provide a job history and adequately demonstrate relevant experience in environmental subsurface investigation and remediation at sites exhibiting subsurface motor fuels contamination. A minimum of five jobs must be documented, and the applicant must adequately demonstrate the following:

a. experience in oversight of installation of groundwater monitoring wells and soil borings;

b. experience in developing and sampling/monitoring groundwater monitoring wells;

c. experience in the oversight of physical removal, treatment, and/or proper disposal of soils contaminated with hydrocarbons or motor fuels;

d. experience in the removal of free phase hydrocarbons from the subsurface; and

e. proficiency with projects that require design and installation/implementation of corrective action programs for the purpose of remediating contaminated soils and/or groundwater sites impacted by USTs.

B. In order to adequately demonstrate required experience, as provided in Subsection A.6.a-e of this Section, only the applicant's experience, or the experience of a full-time employee of the applicant, shall be considered. The experience of a subcontractor or person(s) on retainer shall not be considered, and therefore, will not meet the requirements of this Section.

C. The RAC List will be updated once per quarter to include applicants who have met the requirements of this Section. All new applications or annual updates shall be submitted to the Office of Environmental Services, Permits Division by 4:30 p.m. on or before the fifteenth day of March, June, September, and December.

D. Applicants who submit applications lacking the documentation required in Subsection A of this Section shall be notified in writing of the deficiencies.

E. Any application that adequately demonstrates the requirements of Subsection A of this Section shall be submitted to the administrative authority for approval. Upon approval by the administrative authority the applicant shall be included on the approved RAC list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1207. RAC Listing

A. Notification Requirements. Notification in writing shall be made to the department within 30 days by a RAC who no longer meets the qualification requirements of LAC 33:XI.1205.A.

B. Annual Update Requirements. No later than March 1 of each year, each RAC shall submit the following information to the department:

1. a copy of a valid, unexpired license by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities in the name of the RAC identified on the RAC listing;

2. a copy of a valid, unexpired certificate bearing the name of the person identified on the RAC listing indicating a

minimum of \$1 million contractor's general liability insurance and a minimum of \$1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities; and

3. a copy of a certificate or documentation showing current OSHA compliance for HAZWOPER training, as defined in 29 CFR 1910.120, for at least one full-time employee of the RAC.

C. Failure to submit the documentation required in this Section shall result in removal from the RAC listing until such time as the required information is submitted and reviewed by the department and the administrative authority approves the RAC listing.

D. A RAC shall notify the owner/operator within 24 hours of receiving notice of a RAC listing removal, suspension, and/or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1209. Suspension/Revocation from RAC Listing

A. The administrative authority may suspend or revoke a RAC from the listing based on the following:

1. evidence of fraud or deceit with respect to any documentation submitted to the department; or

2. willful violation of the laws and regulations of Louisiana regarding site assessment or remediation.

B. The administrative authority may revoke a RAC's listing when the RAC or its employees have been convicted of a felony related to response action activities. This revocation is not subject to the RAC listing revocation procedures provided for in this Section.

C. The suspension or revocation of a RAC listing will depend upon seriousness of the offense(s).

1. After a suspension period of 90-365 days as specified by the department, a RAC may petition the department in accordance with the requirements of LAC 33:XI.1205 for relisting.

2. After a period of five years, a RAC whose listing has been revoked may reapply. If a RAC listing is revoked a second time, the revocation shall be permanent.

D. Written Notice

1. When the department determines that a RAC listing should be suspended or revoked, the department shall notify that RAC by certified mail. Such written notice shall contain the following:

a. facts that will justify a recommendation to the administrative authority for suspension or revocation from the RAC listing;

b. a description of the general nature of the evidence supporting the recommendation; and

c. unless the RAC, within 30 days after receipt of the notice, submits a request for an informal hearing before the board, the department shall recommend to the administrative authority that the RAC's listing be suspended or revoked. The request for informal hearing shall be submitted to the Office of Management and Finance, Financial Services Division. A written statement giving the RAC's view of the circumstances shall accompany the request for hearing.

2. If the RAC does not mail a request for hearing and a statement of the circumstances within the time frame specified, the department shall recommend to the administrative authority the suspension for a specified period of time or revocation from the RAC listing.

E. Hearings Before the Board

1. At least 20 days prior to a hearing, the department shall provide the RAC with a notice of the hearing. The notice shall be sent by certified mail and include the time, date, and location of the hearing.

2. All hearings on suspension or revocation from the RAC listing held before the board shall not be an adjudicatory hearing as provided for in the Administrative Procedure Act and shall be conducted with rapidity and without the observance of all formalities. All hearings conducted by the board shall be recorded and a transcript prepared.

3. Within 90 days after conducting an informal hearing, the board shall forward its recommendation to the administrative authority for a decision.

4. Upon receiving notice of a RAC listing removal, suspension, and/or revocation, a RAC shall notify the owner/operator within 24 hours.

F. Record of Hearing. The record of proceedings conducted under this Section shall consist of the following:

1. the RAC's certified request for hearing and statement of the circumstances;
2. the notice of the hearing;
3. all documentary evidence and written comments received;
4. the recording of the hearing; and
5. written recommendations from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by UT007. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of UT007.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Requirements for Response
Action Contractors**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated increase or decrease in costs to implement the proposed action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this rule will affect persons or firms who are engaged in underground storage tank release response action activities that are eligible for reimbursement under the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF). The department believes that persons or firms that conduct this type work will meet the qualifications and requirements of this proposed regulation. A draft rule was distributed to firms who currently do Responsive Action Contractor (RAC) work requesting comments on the proposed language. Many comments were received and addressed in this proposed rule. Most RACs who responded did not indicate that the rule would add any additional financial burden. The department anticipates that firms which are currently on the department's RAC list will be the same firms on the list under the proposed rule, and therefore, no expanded economic benefit opportunities will be realized.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The qualifications stipulated by the rule are considered to be necessary for firms to competently conduct environmental response/remediation work. Firms that currently conduct underground storage tank environmental response/remediation activities are expected to be able to qualify for status as a RAC. Companies who choose not to apply will be negatively affected since only RACs are eligible for work that is reimbursable under the MFUSTTF.

James H. Brent, Ph. D.
Assistant Secretary
0012#029

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of the Commissioner

Electronic Signatures (LAC 4:I:Chapter 7)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Division of Administration hereby gives notice of its intent to promulgate rules and regulations relative to the implementation of electronic signatures.

Title 4

ADMINISTRATION

Part I. General Provisions

Chapter 7. Implementation of Electronic Signatures in Global and National Commerce Act- P.L. 106-229

§701. Short Title

A. These procedures are in response to the Federal "Electronic Signatures in Global and National Commerce Act" (e-sign) effective October 1, 2000. Esign applies only to the use of electronic records and signatures in interstate or foreign commerce. These rules may be referred to as the "E-Sign Rules."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§703. Exemptions

A. State agency transactions that are not governed by the Electronic Signatures in Global and National Commerce Act, PL 106-229, hereinafter referred to as the Ae-sign,@are not subject to these procedures.

B. State agency transactions that have electronic record and signature technology procedures that have been established by statutory and/or regulatory authority approval and do not conflict with e-sign, shall remain in effect.

C. State agency transactions that have electronic record and signature technology procedures that have been established by statutory and/or regulatory authority approval with sections that are in conflict with e-sign, shall have all sections of these procedures remain in effect that are not in conflict with e-sign.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§705. General

A. This section applies to all written electronic communications which are sent to a state agency over the Internet or other electronic network or by another means that is acceptable to the state agency, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement between the sender and the receiving state agency regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems which are not in conflict with the Federal "Electronic Signatures in Global and National Commerce Act:"

1. for the receipt of electronically filed documents pursuant to applicable Louisiana statutory law and promulgated rules and regulations, where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving state agency or local government is not a party to the underlying transaction which is the subject of the communication; or

2. for the electronic approval of payment vouchers under rules adopted by the State Treasurer pursuant to applicable law.

B. Prior to accepting a digital signature, a state agency shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. A state agency that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the state agency.

C. A state agency that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in Subsection D of this section if the state agency:

1. determines that the expense that would necessarily be incurred by the state agency in accepting such a digital signature is excessive and unreasonable;

2. provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable; and

3. files an electronic copy (in html format) of the notice with the Division of Administration. The Division of Administration shall make a copy of such notice available to the general public via the World Wide Web.

D. A state agency shall ensure that all written electronic communications received by the state agency and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the state agency as necessary to comply with applicable law pertaining to audit and records retention requirements.

E. Guidelines Agencies Should Use in Adopting an Electronic Signature Technology

1. An agency's determination of which technology is appropriate for a given transaction must include a risk assessment, and an evaluation of targeted customer or user needs. The initial use of the risk assessment is to identify and mitigate risks in the context of available technologies and their relative total costs and effects on the program being analyzed. The assessment also should be used to develop baselines and verifiable performance measures that track the agency's mission, strategic plans, and performance objectives. Agencies must strike a balance, recognizing that achieving absolute security is likely to be in most cases highly improbable and prohibitively expensive.

2. The identity of participants to a transaction may not need to be authenticated. If authentication is required, several options are available: ID and Passwords for a web-based transaction may be sufficient, however the user login session should be encrypted using either Secured

Sockets Layer (SSL) or Virtual Private Networks (VPN) or an equivalent encryption technology.

3. Digital Signatures/Certificates may offer increased security (positive ID), however this will vary depending on:

- a. who issues the certificates;
- b. what is the identity-proofing process (e.g., are you using Social Security Number, photo IDs, biometrics); and
- c. is the certificate issued remotely via software or mail, or is "in person" identification required?

4. In determining whether an electronic signature is required or is sufficiently reliable for a particular purpose, agencies should consider the relationships between the parties, the value of the transaction, and the likely need for accessible, persuasive information regarding the transaction at some later date (e.g., audit or legal evidence). The types of transactions may require different security control measures, based on security risks and legal obligations:

- a. transactions involving the transfer of funds;
- b. transactions where the parties commit to actions or contracts that may give rise to financial or legal liability;
- c. transactions involving information protected under state or federal law or other agency-specific statutes obliging that access to the information be restricted;
- d. transactions where the party is fulfilling a legal responsibility which, if not performed, creates a legal liability (criminal or civil);
- e. transactions where no funds are transferred, no financial or legal liability is involved and no privacy or confidentiality issues are involved.

5. Agency transactions fall into five general categories, each of which may be vulnerable to different security risks:

- a. intra-agency transactions;
- b. inter-agency transactions (i.e., those between state agencies);
- c. transactions between a state agency and federal or local government agencies;
- d. transactions between a state agency and a private organization-contractor, non-profit organization, or other entity;
- e. transactions between an agency and a member of the general public.

6. Agencies should follow several privacy tenets:

- a. electronic authentication should only be required where needed. Many transactions do not need, and should not require, detailed information about the individual;
- b. when electronic authentication is required for a transaction, do not collect more information from the user than is required for the application;
- c. the entity initiating a transaction with a state agency should be able to decide the scope of their electronic means of authentication.

7. When agencies evaluate the retention requirements for specific records, they should consider the following if the record was signed with an electronic signature.

- a. *Low Risk* simple electronic signature (e.g., typed name on an e-mail message)
- b. *High Risk* digitally-signed communication message that has been processed by a computer in such a manner that ties the message to the individual that signed the message. The digital signature must be linked to the message

of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

8. If the record contains a digital signature, the following additional documents may be required:

- a. a copy of the *Public Key*;
- b. a copy of the Certificate Revocation List (CRL) showing the validity period of the certificate or a copy of the On-line Certificate Status Protocol (OCSP) results;
- c. Certification Practice Statement (CPS).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§707 Definitions

A. The following words and terms, when used in this section, shall have the following meanings unless the context expressly indicates otherwise:

Asymmetric Cryptosystem a computer-based system that employs two different but mathematically related keys with the following characteristics:

- a. one key encrypts a given message;
- b. one key decrypts a given message; and
- c. the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.

Certificate a message which:

- a. identifies the certification authority issuing it;
- b. names or identifies its subscriber;
- c. contains the subscriber's public key;
- d. identifies its operational period;
- e. is digitally signed by the certification authority issuing it; and
- f. conforms to ISO X.509 Version 3 standards.

Certificate Manufacturer a person that provides operational services for a Certification Authority or PKI Service Provider. The nature and scope of the obligations and functions of a Certificate Manufacturer depend on contractual arrangements between the Certification Authority or other PKI Service Provider and the Certificate Manufacturer.

Certificate Policy a document prepared by a Policy Authority that describes the parties, scope of business, functional operations, and obligations between and among PKI Service Providers and End Entities who engage in electronic transactions in a Public Key Infrastructure.

Certification Authority a person who issues a certificate.

Certification Practice Statement documentation of the practices, procedures, and controls employed by a Certification Authority.

Digital Signature an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature, and that complies with the requirements of this section.

Digitally-Signed Communication a message that has been processed by a computer in such a manner that ties the message to the individual that signed the message.

End Entities subscribers or Signers and Relying Parties.

Escrow Agent a person who holds a copy of a private key at the request of the owner of the private key in a trustworthy manner.

Handwriting Measurements the metrics of the shapes, speeds and/or other distinguishing features of a signature as

the person writes it by hand with a pen or stylus on a flat surface.

Key PairCa private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify a digital signature that the private key creates.

Local GovernmentCa parish, municipality, special district, or other political subdivision of this state, or a combination of two or more of those entities.

MessageCa digital representation of information.

PersonCan individual, state agency, local government, corporation, partnership, association, organization, or any other legal entity.

PKIPublic Key Infrastructure.

PKI Service ProviderCa Certification Authority, Certificate Manufacturer, Registrar, or any other person that performs services pertaining to the issuance or verification of certificates.

Policy AuthorityCa person with final authority and responsibility for specifying a Certificate Policy.

Private KeyCa the key of a key pair used to create a digital signature.

Proof of IdentificationCa the document or documents or other evidence presented to a Certification Authority to establish the identity of a subscriber.

Public KeyCa the key of a key pair used to verify a digital signature.

Public Key CryptographyCa type of cryptographic technology that employs an asymmetric cryptosystem.

RegistrarCa person that gathers evidence necessary to confirm the accuracy of information to be included in a Subscriber's certificate.

Relying PartyCa state agency that has received an electronic message that has been signed with a digital signature and is in a position to rely on the message and signature.

Role-Based KeyCa key pair issued to a person to use when acting in a particular business or organizational capacity.

Signature DigestCa the resulting bit-string produced when a signature is tied to a document using Signature Dynamics.

SignerCa the person who signs a digitally signed communication with the use of an acceptable technology to uniquely link the message with the person sending it.

State AgencyCa department, commission, board, office, council, or other agency in the executive branch of state government that is created by the constitution, Executive Order, or a statute of this state. Higher education, the legislature and the judiciary are to be considered State agencies to the extent that the communication is pursuant to a state law applicable to such entities.

SubscriberCa person who:

- a. is the subject listed in a certificate;
- b. accepts the certificate; and
- c. holds a private key which corresponds to a public key listed in that certificate.

TechnologyCa the computer hardware and/or software-based method or process used to create digital signatures.

Written Electronic CommunicationCa message that is sent by one person to another person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§709. Digital Signatures Must be Created by an Acceptable Technology

A. For a digital signature to be valid for use by a state agency, it must be created by a technology that is accepted for use by the Division of Administration pursuant to guidelines listed in §711 of this document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§711. Acceptable Technology

A. The technology known as Public Key Cryptography is an acceptable technology for use by state agencies, provided that the digital signature is created consistent with the following.

1. A public key-based digital signature must be unique to the person using it. Such a signature may be considered unique to the person using it if:

a. the private key used to create the signature on the message is known only to the signer or, in the case of a role-based key, known only to the signer and an escrow agent acceptable to the signer and the state agency; and

b. the digital signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetric cryptosystem and the signer's private key; and

c. although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and

d. it is computationally infeasible to derive the private key from knowledge of the public key.

2. A public-key based digital signature must be capable of independent verification. Such a signature may be considered capable of independent verification if:

a. the relying party can verify the message was digitally signed by using the signer's public key to decrypt the message; and

b. if a certificate is a required component of a transaction with a state agency, the issuing PKI Service Provider, either through a certification practice statement, certificate policy, or through the content of the certificate itself, has identified what, if any, proof of identification it required of the signer prior to issuing the certificate.

3. The private key of public-key based digital signature must remain under the sole control of the person using it, or in the case of a role-based key, that person and an escrow agent acceptable to that person and the state agency. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, must exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature.

4. The digital signature must be linked to the message of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

5. Acceptable PKI Service Providers

a. The Division of Administration shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to state agencies or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the Division of Administration, or may be obtained electronically via the World Wide Web.

b. State agencies shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

c. The Division of Administration shall place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the Division of Administration with a copy of its current certification practice statement, if any, and a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (S.A.S. 70) to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

d. In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undergo a SAS 70 Type One audit - A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.

e. In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undergo a SAS 70 Type Two audit CA Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.

f. In lieu of the audit requirements of Subparagraphs d and e above, a PKI Service provider may be placed on the "Approved List of PKI Service Providers" upon providing the Division of Administration with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the Division of Administration in its sole discretion. The Division of Administration may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable guidelines published by the Division of Administration.

g. To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the audit requirements or other acceptable documentation to the Division of Administration every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the Division of

Administration promptly following the adoption by the Certification Authority of such changes.

h. If the Division of Administration is informed that a PKI Service Provider has received a qualified or otherwise unacceptable opinion following a required audit or if the Division of Administration obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to become no longer in compliance with the audit requirements of this section, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the Division of Administration. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit state agencies from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

B. The state may elect to enact or adopt the Federal Uniform Electronic Transactions Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§713. Provisions for Adding New Technologies to the List of Acceptable Technologies

A. Any person may, by providing a written request that includes a full explanation of a proposed technology which meets the requirements of §709 in this Rule, petition the Division of Administration to review the technology. If the Division of Administration determines that the technology is acceptable for use by state agencies, the Division of Administration shall draft proposed administrative rules which would add the proposed technology to the list of acceptable technologies in §711 of this Rule.

B. The Division of Administration has 90 days from the date of the request to review the petition and either accept or deny it. If the Division of Administration does not approve the request within 90 days, the petitioner's request shall be considered denied. If the Division of Administration denies the petition, it shall notify the petitioner in writing of the reasons for denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

Any person may submit data, views or positions, in writing, to the Division of Administration, State of Louisiana, P. O. Box 94095, Baton Rouge, Louisiana 70804-9095. Such comments must be received no later than February 1, 2001, at 4:30 p.m.

Family Impact Statement

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Signatures**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
No attributable costs or savings as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No attributable effect on Revenue Collections as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No attributable costs as a result of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No attributable effect as a result of this rule.

Whitman J Kling, Jr.
Deputy Undersecretary
0012#093

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

Preceptorship Program
(LAC 46:LXXXV.700 and 1101-1123)

The Louisiana Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.700 and 1101 through 1123 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed amendments to the rule are set forth below.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXXV. Veterinarians

Chapter 7. Veterinary Practice

§700. Definitions

* * *

Preceptee Individuals who are unlicensed veterinarians or who are full time, fourth-year students of an accredited college of veterinary medicine and who are in a board-approved preceptorship program.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328, amended LR 20:1381 (December, 1994), LR 24:940 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998), LR 27:

Chapter 11. Preceptorship Program

§1103. Definitions

* * *

Limited Approval Ca specialty facility, such as but not limited to, referral clinics, research facilities, and humane societies, may be approved by the board for a preceptee to perform no more than one-half the required preceptorship program.

Preceptor Ca practitioner who is a licensed veterinarian, a member in good standing of his or her state association of the American Veterinary Medical Association and whose facility or practice has been approved by the board as a preceptorship host.

* * *

Preceptorship Program Ca preceptorship program approved by the Louisiana Board of Veterinary Medicine.

1. The program shall consist of not less than eight calendar weeks in training in a program approved by the board.

2. For students graduating in calendar year 2001 and thereafter, the program must be performed after January of the fourth year of study.

* * *

Week in Training Ca week in training shall consist of a minimum of 40 hours earned during a maximum of six calendar days. A calendar day shall not exceed nine hours in duration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 19:208 (February 1993); LR 23:968 (August 1997); LR 24:1293 (July, 1998); LR 27:

§1105. Applicants

A. Every applicant for a license to practice veterinary medicine in the state of Louisiana must successfully complete, during the fourth year in an accredited school of veterinary medicine or after graduation, a preceptorship program at a board-approved facility. Only one board-approved preceptorship program will be allowed to be performed by a preceptee.

B. Every applicant for a preceptorship program must:

1. choose a facility that has been pre-approved by the board or preceptorship committee. If the subject facility has not been pre-approved, the applicant or facility may request an assessment questionnaire;

2. complete an agreement form provided by the board in which the proposed start date and end date of the preceptorship is indicated. Said agreement form must be agreed upon and signed by both the applicant and preceptor. The completed agreement form must be submitted to the board two weeks prior to the start of the preceptorship.

C. An applicant may divide the preceptorship program into two sessions at two different approved facilities. However, a session must consist of no less than three consecutive weeks in training.

D. A preceptee may perform no more than one-half of the preceptorship program at a specialty facility, such as, but not limited to, referral clinics, research facilities, and humane societies, which have received limited approval by the board.

E. The board shall have the discretionary right to waive compliance with the preceptorship program when the applicant has been licensed in another state or is eligible for a license without examination and provides written proof of

employment or a licensed veterinarian in a clinical practice for a minimum of 90 consecutive days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:1686 (December 1997), LR 24:942 (May 1998); LR 27:

§1109. Preceptor's Responsibilities

A. The preceptor shall have the following responsibilities:

1. to assume the responsibility of an instructor during the training period with the primary objective of training the preceptee under direct supervision as set forth in rules 700 and 702.B;

2. - 5. ...

6. to provide a written job description on forms provided by the board with the practice assessment questionnaire. A copy of said job description will be distributed to the preceptee upon applying for preceptorship at the facility, so that the preceptee will have an understanding of his/her responsibilities;

7. to assure that the preceptee's assignments, as much as possible, cover all aspects of the practice including office management, bookkeeping, and economics unless the facility holds a limited approval by the board as a specialty facility;

8. - 9. ...

10. to verify the preceptee's preceptorship log as requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1111. Preceptee's Responsibilities

A. The failure of the preceptee to comply with all requirements of preceptorship assignment, can result in an additional preceptorship assignment and/or delay in licensure.

B. The preceptee's responsibilities are the following:

1. - 5. ...

6. to be responsible for the completion and timely submission to the board of all required preceptorship documents, such as the agreement form, attendance log, and evaluation sheets;

7. to comply with the requirement of direct supervision set forth in rules 700 and 702.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1113. Practice Assessment Forms and Job Description Forms

A. ...

1. Practice Assessment Form. This form is used to determine if the practice facility meets the standards required by the American Veterinary Medical Association; and

2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1115. Preceptorship Practice Requirements

A. A completed Practice Assessment Questionnaire and Job Description Form shall be submitted to the board, at least two weeks prior to the start of a preceptorship, to provide adequate time for board review and approval of the facility and for applicant-practitioner negotiations prior to time the preceptorship begins.

B. A firm commitment must not be made between the preceptee and the preceptor before the practice is approved by the board or preceptorship committee.

C. Approval of a preceptor shall include the following:

1. practices providing small animal services must adhere to high standards of surgical service including a separate prep room; availability of gas anesthesia; and use of gowns, caps and masks for orthopedic and other involved surgeries;

2. standards for large animal surgery must be consistent with good modern surgical techniques and provide for the performance of aseptic operative procedures;

3. - 6. ...

D. Specialty facilities, such as but not limited to, referral clinics, research facilities, and humane societies, may receive limited approval by the board to allow for no more than one-half of the required preceptorship program to be performed by a preceptee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1117. Financial Arrangements and Other Agreements

A. ...

B. A written agreement between the preceptee and preceptor setting forth the responsibilities of the student and the practitioner should be agreed to by both parties at the time the commitment is made. The agreement should include the starting and termination dates, duty hours, after duty hours, free time, salary and fringe benefits. This type of written agreement reduces possible misunderstandings and enhances the learning experience.

C. All written agreements are carried out between the preceptee and the preceptor. A firm commitment must not be made between the preceptee and the preceptor before the practice is approved by the committee or the board. Premature commitments to practices that were not approved will not be tolerated. When this occurs in the future, that particular practitioner will be denied for the applicant involved.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1119. Preceptorship Attendance Log

A. Each preceptee shall be required to keep a daily log on a form provided by the board of his/her attendance for the duration of the program. The attendance log form shall be reviewed and signed by the preceptor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:968 (August 1997); LR 27:

§1121. Evaluations

A. At the conclusion of the preceptorship program, the preceptor and preceptee shall complete an evaluation form provided by the board. The completed evaluation forms must be submitted to the board within a 20-day time period to begin with the conclusion of the preceptorship program. No preceptorship program is complete until all required documentation is received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:968 (August 1997); LR 27:

§1123. Effective Date

A. These rules and regulations shall take effect upon publication in the March 20, 1990 issue of the *Louisiana Register* and as amended thereafter, and shall be complementary to all other rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:234 (March 1990), amended LR 27:

Interested parties may submit written comments to Kimberly B. Barbier, Administrative Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on January 18, 2001. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on January 25, 2001, at 10 a.m., at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, Louisiana.

Kimberly B. Barbier
Administrative Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Preceptorship Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$280). Licensees will be informed of this rule change via the board's regular newsletter or other direct mailings, which result in minimal costs to the board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the amendment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups. All applicants for a veterinary license are currently required to perform a preceptorship program at a board-approved facility as a prerequisite to licensure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

Kimberly B. Barbier
Administrative Director
0012#083

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Community Supports and Services**

**Home and Community Based Services Waiver
ProgramC Childrens ChoiceC Provider Requirements and
Reimbursement Methodology**

The Department of Health and Hospitals, Bureau of Community Supports and Services proposes to adopt the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule implementing a Home and Community Based Services waiver called Childrens Choice effective January 15, 2001 (*Louisiana Register*, Volume 26, Number 12). Childrens Choice provides up to \$7,500 per year per child for waiver services for children with developmental disabilities who live with their families. Waiver recipients also receive all medical services covered by Medicaid, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. In order to facilitate the operations of the Childrens Choice waiver, the Bureau of Community Supports and Services (BCSS) proposes to amend the January 15, 2001 Rule to include provider qualifications for participation in Childrens Choice.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following provisions governing provider participation in Childrens Choice.

General Requirements for Medicaid Enrollment

In order to participate in the Medicaid Program, a provider must meet all of the following requirements.

1. The provider must meet all the requirements for licensure as established by state laws and rules promulgated by the Department of Health and Hospitals (DHH) or the Department of Social Services (DSS).

2. The provider must agree to comply with all the terms and conditions for Medicaid enrollment as contained in the provider enrollment packet; the Medical Assistance Program Integrity Law (MAPIL), R.S. 46:437.1 - 440.3; the provider agreement; the standards for participation contained

in the Children's Choice and Case Management Services provider manuals; and all other applicable federal and state laws, regulations and policies.

3. All services must be appropriately documented in the providers' records.

Children's Choice Enrollment Requirements

Both case management and direct services providers must comply with the following requirements in order to participate as Children Choice providers. Agencies will not be added to the Freedom of Choice (FOC) list of available providers maintained by BCSS until they have received a Medicaid provider number.

1. Providers shall attend all mandated meetings and training sessions as directed by BCSS as a condition of enrollment and continued participation as waiver providers. For initial enrollment, providers shall attend the pre-application orientation conducted by BCSS prior to receiving a Provider Enrollment Packet.

2. A separate Provider Enrollment Packet must be completed for each site in each DHH Administrative Region where the agency will provide services.

3. Recipient case records and billing records shall be housed at the site in the DHH Administrative Region where the recipient resides.

4. Providers may not refuse to serve any waiver participant that chooses their agency to provide services.

5. Providers shall have available computer equipment and software necessary to participate in prior authorization and data collection as described in the Children's Choice provider manual.

6. Providers shall participate in initial training for prior authorization and data collection. This initial training and any DHH scheduled subsequent training addressing program changes is to be provided at no cost to the agency. Repeat training must be paid for by the requesting agency.

7. Providers shall develop a Quality Improvement Plan which must be submitted for approval within 60 days after the DHH training. Self assessments are due six months after approval of the plan and yearly thereafter.

8. The agency must not have been terminated or actively sanctioned by Medicaid, Medicare or other health related programs in Louisiana or any other state.

9. The agency must not have an outstanding Medicaid Program audit exception or other unresolved financial liability owed to the state.

10. Providers shall be certified for a period of one year. Re-certification must be completed no less than 60 days prior to the expiration of the certification period.

11. Waiver services are to be provided only to persons who are waiver participants, and strictly in accordance with the provisions of the approved comprehensive plan of care.

12. Changes in the following areas are to be reported to both BCSS and the Provider Enrollment Section in writing at least 10 days prior to any change: ownership, physical location, mailing address, telephone number, and account information affecting electronic funds transfer.

13. The provider must complete a new provider enrollment packet when a change in ownership of 5 percent to 50 percent of the controlling interest occurs, but may continue serving recipients. When 51 percent or more of the controlling interest is transferred, a complete re-certification

process must occur and the agency shall not continue serving recipients until the re-certification process is complete.

Requirements for Case Management Providers

Case management providers must also comply with the following two requirements in order to participate as Children Choice providers.

1. Providers of case management services for the Children's Choice Program must have a contract with DHH to provide services to waiver participants.

2. Case management agencies must meet all requirements of their contract in addition to the requirements contained in the Children's Choice and Case Management Services provider manuals.

Requirements for Direct Service Providers

Direct service providers must also comply with the following requirements in order to participate as Children Choice providers.

1. The provider must be licensed as a Personal Care Attendant Agency by the DSS Bureau of Licensing.

2. Direct service providers must provide, at a minimum, family support and crisis support services.

3. The following services may either be provided directly by the direct service provider or by written agreement (subcontract) with other agents. The actual provider of the service, whether it is the direct service provider or a subcontracted agent, shall meet the following licensure or other qualifications.

a. Center-based respite must be provided by a facility licensed by DSS Bureau of Licensing as a Center-based Respite Agency.

b. Family training must be provided at approved events.

c. Diapers must be provided by the enrolled direct service provider.

d. Environmental adaptations must be provided by an individual/agency deemed capable to perform the service by the recipient's family and the direct service provider agency. When required by state law, the person performing the service must meet applicable requirements for a professional license. When building code standards are applicable, modifications to the home shall meet such standards.

4. Providers shall maintain a 24-hour toll-free telephone number manned by a person and shall provide a written plan to the recipients, families and case managers that explains how workers can be contacted and the expected response time.

5. Providers shall develop and provide brochures to interested parties that documents the agency's experience, toll-free telephone number, BCSS information, Helpline, and other pertinent information. All brochures are subject to BCSS approval prior to distribution.

6. Agencies must provide services consistent with the personal outcomes identified by the child and his/her family.

7. All personnel who are at a supervisory level must have a minimum of one year verifiable work experience in planning and providing direct services to people with mental retardation or other developmental disabilities.

8. The agency shall document that their employees and the employees of subcontractors do not have a criminal record as defined in 42 CFR 441.404(b) which states:

Providers of community supported living arrangements services:

a. do not use individuals who have been convicted of child abuse, neglect, or mistreatment, or of a felony involving physical harm to an individual; and

b. take all reasonable steps to determine whether applications for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment, or a criminal record involving physical harm to an individual.

9. Direct service providers who contract with other agencies to provide waiver services shall maintain copies of such contracts signed by both agencies. Such contracts must state that the subcontractor may not refuse to serve any waiver participant referred to them by the enrolled direct service provider agency.

10. Direct service providers and subcontractors shall maintain written internal policy and procedure manuals that comply with the requirements contained in the Children's Choice provider manual.

11. Enrollment of direct service providers is contingent on the submission of a complete application packet, verified by a site visit conducted by BCSS staff as described in the Children's Choice provider manual.

12. Service delivery shall be documented with progress notes on recipient status, supports provided that address personal outcomes, recipient responses, etc. Progress notes shall be dated and signed in ink. Whiteout is not to be used in making corrections.

Reimbursement Methodology

Case management services shall be reimbursed at a flat monthly rate billed for each waiver participant served in accordance with the conditions and procedures contained in the Case Management Services provider manual.

Direct service providers shall be reimbursed according to the following reimbursement methodology. Actual rates will be published in the Children's Choice provider manual and will be subsequently amended by direct notification to the affected providers. For services provided by a subcontractor agency, the enrolled direct service provider shall reimburse the subcontractor according to the terms of the contract and retain the administrative costs.

1. Family support, crisis support and center-based respite services shall be reimbursed at a flat rate per half-hour unit of service, which covers both service provision and administrative costs.

2. Family training shall be reimbursed at cost plus a set administrative add-on per training session.

3. Environmental modifications shall be reimbursed at cost plus a set administrative add-on per project.

4. Diapers shall be reimbursed at cost plus a set monthly administrative add-on.

Interested persons may submit written comments to: Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is the person responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, January 25, 2001, at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data,

views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community Based Services Waiver Program Children's Choice Provider Requirements and 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 for SFY 2000-01, 2001-02, and 2002-03. It is anticipated that \$400 (\$200 SGF and \$200 FED) will be expended in SFY 2000-01 for the states administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

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 and employment.

Ben A. Bearden
Director
0012#055

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Nursing Homes Minimum Licensure Standards
Alzheimer's Special Care Disclosure
(LAC 48:I.9704)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule as authorized by R.S. 40:2009.1 - 2116.4. This proposed Rule is adopted 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 effective January 20, 1998, which repealed the previous regulations governing the licensure of nursing homes and established new regulations (*Louisiana Register*, Volume 24, Number 1). The purpose of the nursing home licensing law and requirements is to provide for the development, establishment and enforcement of standards of care for individuals residing in nursing homes which will promote

safe and adequate treatment for these individuals. The licensing law also provides regulations for the construction, maintenance and operation of nursing homes.

Act 909 of the 1997 Regular Session of the Louisiana Legislature directed the department to develop disclosure standards for certain health care providers who offer a special program or special unit for the care of persons with Alzheimer's disease or a related disorder. In compliance with Act 909, the department proposes to amend the minimum licensing standards for nursing homes to include regulations for Alzheimer's Special Care Disclosure.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by ensuring that adequate information is available for persons who are considering nursing home placement for a family member with Alzheimer's disease or a related disorder.

Title 48

PUBLIC HEALTH - GENERAL

Part I General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter A. General Provisions

§9704. Alzheimer's Special Care Disclosure

A. Any provider offering a special program for persons with Alzheimer's disease or a related disorder must disclose the form of care or treatment that distinguishes it as being especially applicable to or suitable for such persons. For the purpose of this section, a related disorder means progressive, incurable dementia.

B. Prior to entering into any agreement to provide care, a provider must make the disclosure to (1) any person seeking services within an Alzheimer's special care program or (2) any person seeking such services on behalf of a person with Alzheimer's disease or a related disorder within an Alzheimer's special care program. A provider must make the disclosure upon characterizing programs or services as specially suited for persons with Alzheimer's disease or a related disorder. Additionally, a provider must give copies of current disclosure forms to all designees, representatives or sponsors of persons receiving treatment in an Alzheimer's special care program.

C. A provider must furnish the disclosure to the department when applying for a license, renewing an existing license, or changing an existing license. Additional disclosure may be made to the state ombudsman. During the licensure or renewal process, the department will examine all disclosures to verify the accuracy of the information. Failure to provide accurate or timely information constitutes non-compliance with this section and may subject the provider to standard administrative penalties or corrective actions. Distributing an inaccurate or misleading disclosure form constitutes deceptive advertising and may subject a provider to prosecution under LA R.S. 51:1401 *et seq.* In such instances, the department will refer the matter to the Attorney General's Division of Consumer Protection for investigation and possible prosecution.

D. Within seven working days of a significant change in the information submitted to the department, a provider must furnish an amended disclosure form reflecting the change to the following parties:

- a. the department;
- b. any clients with Alzheimer's disease or a related disorder currently residing in the nursing home;
- c. any designee, representative or sponsor of any such client;
- d. any person seeking services in an Alzheimer's special care program; and
- e. any person seeking services on behalf of a person with Alzheimer's disease or a related disorder in an Alzheimer's special care program.

E. A provider must use the Alzheimer's Special Care Disclosure Form developed by the department. The disclosure form shall contain the following information:

1. a written statement of the overall philosophy and mission of the Alzheimer's special care program which reflects the needs of residents afflicted with dementia;
2. a description of the criteria and process for admission to, transfer, or discharge from the program;
3. a description of the process used to perform an assessment as well as to develop and implement the plan of care, including the responsiveness of the plan of care to changes in condition;
4. a description of staff training and continuing education practices;
5. a description of the physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
6. a description of the frequency and types of resident activities;
7. a statement of philosophy on the family's involvement in care and a statement on the availability of family support programs;
8. a list of the fees for care and any additional program fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1300.121-1300.125.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 27:

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, January 25, 2001, at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Nursing Homes C Minimum Licensure
Standards C Alzheimer-s Special Care Disclosure**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2000-01, 2001-02, and 2002-03. It is anticipated that \$240 (\$120 SGF and \$120 FED) will be expended in SFY 2000-01 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 have no programmatic fiscal impact for SFY 2000-01, 2001-02, and 2002-03. It is anticipated that \$240 (\$120 SGF and \$120 FED) will be expended in SFY 2000-01 for the state's administrative 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)**

Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non-governmental groups. However, a nursing facility that fails to provide timely or accurate information may be subject to standard administrative penalties (including civil monetary penalties ranging from \$50 for the first violation to \$100 per day for each subsequent violation) or corrective actions (citations requiring a corrective action plan from the facility).

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no known effect on competition and employment.

Ben A. Bearden
Director
0012#054

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 76 C Privacy of Consumer Financial Information
(LAC 37:XIII.Chapter 99)**

As authorized by Title 22:1, et seq. and in accordance with the provisions of R.S. 49:950 et seq. of the Administrative Procedure Act, the Commissioner of Insurance proposes to adopt Regulation 76 of the Louisiana Department of Insurance, which will govern the privacy of consumer financial information in this state.

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Family Impact Statement

I. Describe the effect of the proposed rule on the stability of the family. The proposed rule should have no measurable impact upon the stability of the family.

II. Describe the effect of the proposed on the authority and rights of parents regarding the education and supervision of their children. The proposed rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

III. Describe the effect of the proposed rule on the functioning of the family. The proposed rule should have no direct impact on the functioning of the family.

IV. Describe the effect of the proposed rule on family earnings and budget. The proposed rule should have no direct impact upon family earnings and budget.

V. Describe the effect of the proposed rule on the behavior and personal responsibility of children. The proposed rule should have no impact upon the behavior and personal responsibility of children.

VI. Describe the effect of the proposed rule on the ability of the family or a local governmental unit to perform the function as contained in the rule. The proposed rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in this rule.

J. Robert Wooley
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 76 C Privacy of Consumer
Financial Information**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is not anticipated that the adoption of Regulation 76 would result in any implementation costs or savings to local or state governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The adoption of Regulation 76 should have no effect on revenue collections of local or state governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There will be costs to insurance companies as a result of Regulation 76 because they must provide to consumers notifications of their rights to privacy and allow consumers to opt out of having their financial information sold or provided to other entities; however, DOI has no way of estimating what those costs would be.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The adoption of Regulation 76 should have no impact on competition and employment.

Ronald Couvillion
Assistant Commissioner
Management and Finance
0012#087

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 77C Medical Necessity Review Determinations (LAC 37:XII:Chapter 62)

In accordance with the provisions of R.S. §49:953 of the Administrative Procedure Act, the Department of Insurance is proposing to adopt the following rule regarding standards for determining the necessity of medical care or services recommended by health care providers. This Rule is necessary to establish reasonable requirements for limiting covered services included in a policy or contract of insurance coverage that do not misrepresent the benefits, advantages, conditions, or terms of the policy issued or to be issued based on medical necessity determinations. This Rule establishes the statutory requirements for health insurance issuers who seek to make such limitations in products sold in this state and establish the standards for Medical Necessity Review Organizations seeking licensure under Title 22 of the Louisiana Revised Statutes of 1950.

Title 37

INSURANCE

Part XII. Regulations

Chapter 62. Medical Necessity Review Determinations

§6201. Purpose

A. The purpose of this regulation is to enforce the statutory requirements of Title 22 of the Louisiana Revised Statutes of 1950 that require health insurance issuers who seek to establish exception criteria or limitations on covered benefits that are otherwise offered and payable under a policy or certificate of coverage sold in this state, by requiring a medical necessity determination to be made by the health insurance issuer. The statutory requirements also apply to any health benefit plan that establishes exception criteria or limitations on covered benefits that are otherwise offered and payable under a non-federal government benefit plan. Additionally, the statute establishes a process for Medical Necessity Review Organizations to qualify for state licensure and Independent Review Organizations to become certified by the Department of Insurance. The statutory requirements establish the intent of the legislature to assure licensed health insurance issuers and non-federal government benefit plans meet minimum quality standards and do not utilize any requirement that would act to impinge on the ability of insureds or government employees to receive appropriate medical advice and/or treatment from a health care professional.

B. This regulation implements the statutory requirements of R.S. 22:2021, and Chapter 7 of Title 22 of the Louisiana Revised Statutes regarding the use of medical necessity to limit stated benefits in a fully insured health policy or HMO certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6203. Definitions

Adverse DeterminationCa determination that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and denied, reduced, or terminated by a reviewer based on medical necessity, appropriateness, health care setting, level of care, or effectiveness.

Ambulatory ReviewCreview of health care services performed or provided in an outpatient setting.

Appropriate Medical InformationCall outpatient and inpatient medical records that are pertinent to the evaluation and management of the covered person and that permit the Medical Necessity Review Organization to determine compliance with the applicable clinical review criteria. In the review of coverage for particular services, these records may include, but are not necessarily limited to, one or more of the following portions of the covered person's medical records as they relate directly to the services under review for medical necessity: admission history and physical examination report, physician's orders, progress notes, nursing notes, operative reports, anesthesia records, hospital discharge summary, laboratory and pathology reports, radiology or other imaging reports, consultation reports, emergency room records, and medication records.

Authorized RepresentativeCa person to whom a covered person has given written consent to represent the covered person in an internal or external review of an adverse determination of medical necessity. "Authorized representative" may include the covered person's treating provider, if the covered person appoints the provider as his authorized representative and the provider agrees and waives in writing, any right to payment from the covered person other than any applicable copayment or coinsurance amount. In the event that the service is determined not to be medically necessary by the MNRO/IRO, and the covered person or his authorized representative thereafter requests the services, nothing shall prohibit the provider from charging the provider's usual and customary charges for all MNRO/IRO determined non-medically necessary services provided when such requests are in writing.

Case ManagementCa coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

Certification or CertifyCa determination by a reviewer regarding coverage of an admission, continued stay, or other health care service for the purpose of determining medical necessity, appropriateness of the setting, or level of care.

Clinical PeerCphysician or other health care professional who holds an unrestricted license in the same or an appropriate specialty that typically manages the medical condition, procedure, or treatment under review. Non-physician practitioners, including but not limited to nurses, speech and language therapists, occupational therapists, physical therapists, and clinical social workers, are not considered to be clinical peers and may not make adverse determinations of proposed actions of physicians (medical doctors shall be clinical peers of medical doctors, etc.).

Clinical Review CriteriaCthe written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a reviewer to determine the necessity and appropriateness of covered health care services.

Commissioner Cthe commissioner of insurance.

Concurrent Review C a review of medical necessity, appropriateness of care, or level of care conducted during a patient's stay or course of treatment.

Covered Benefits or **Benefits** C those health care services to which a covered person is entitled under the terms of a health benefit plan.

Covered Person C a policyholder, subscriber, enrollee, or other individual covered under a policy of health insurance or HMO subscriber agreement.

Discharge Planning C the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

Disclose C to release, transfer, or otherwise divulge protected health information to any individual, entity, or person other than the individual who is the subject of the protected health information.

Emergency Medical Condition C a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. placing the health of the individual in serious jeopardy;
2. with respect to a pregnant woman, placing the health of the woman or her unborn child in serious jeopardy;
3. serious impairment to bodily function; or
4. serious dysfunction of any bodily organ or part.

Entity C an individual, person, corporation, partnership, association, joint venture, joint stock company, trust, unincorporated organization, any similar entity, agent, or contractor, or any combination of the foregoing.

External Review Organization C an independent review organization that conducts independent external reviews of adverse determinations and final adverse determinations and whose accreditation or certification has been reviewed and approved by the Department of Insurance.

Facility C an institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, inpatient hospice facilities, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

Final Adverse Determination C an adverse determination that has been upheld by a reviewer at the completion of the medical necessity review organization's internal review process as set forth in this Chapter.

Health Benefit Plan C group and individual health insurance coverage, coverage provided under a group health plan, or coverage provided by a nonfederal governmental plan, as those terms are defined in R.S. 22:250.1. **Health Benefit Plan** shall not include a plan providing coverage for excepted benefits as defined in R.S. 22:250.1(3).

Health Care Professional C a physician or other health care practitioner licensed, certified, or registered to perform specified health services consistent with state law.

Health Care Provider or **Provider** C a health care professional, the attending, ordering, or treating physician, or a facility.

Health Care Services C services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

Health Information C information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

1. the past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family;
2. the provision of health care services to a covered person; or
3. payment for the provision of health care services to a covered person.

Health Insurance Coverage C benefits consisting of medical care provided or arranged for directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer.

Health Insurance Issuer C an insurance company, including a health maintenance organization, as defined and licensed pursuant to Part XII of Chapter 2 of this Title, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974.

Medical Necessity Review Organization or **MNRO** C a health insurance issuer or other entity licensed or authorized pursuant to this Chapter to make medical necessity determinations for purposes other than the diagnosis and treatment of a medical condition.

Prospective Review C a review conducted prior to an admission or a course of treatment.

Protected Health Information C health information that either identifies a covered person who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

Retrospective Review C a review of medical necessity conducted after services have been provided to a patient, but shall not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

Second Opinion C an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6205. Authorization or Licensure as an MNRO

A. No health insurance issuer or health benefit plan, as defined in this chapter, shall act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar medical determinations unless authorized to act as an MNRO by the commissioner

as provided in this Chapter. Benefits covered under a health benefit plan sold or in effect in this state on or after January 1, 2001 shall be limited, excluded, or excepted from coverage under any medical necessity determination requirement, appropriateness of care determination, level of care needed, or any other similar determination only when such determination is made by an authorized or licensed MNRO as provided in this Chapter.

B. No entity acting on behalf of or as the agent of a health insurance issuer may act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations unless licensed as an MNRO by the commissioner as provided in this Chapter.

C. Any other entity may apply for and be issued a license under this Chapter to act as an MNRO for the purposes of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations on behalf of a health benefit plan.

D. Any entity licensed or authorized as an MNRO shall be exempt from the requirements of R.S. 40:2721 through 2736.

E. An integrated health care network or other entity contracting with a health insurance issuer for provision of covered services under a risk sharing arrangement, shall be allowed to make initial adverse medical necessity determinations provided the health insurance issuer remains responsible for provision of internal and external review requirements and has submitted the information required under §6205.B.5 for review and approval. In such instances, a covered person's request for an internal or external appeal of an adverse determination shall not require concurrence by a provider reimbursed under a risk sharing arrangement with the health insurance issuer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6207. Procedure for Application to Act as an MNRO

A. Any applicant for licensure other than a health insurance issuer shall submit an application to the commissioner and pay an initial licensure fee as specified in §6211.D. The application shall be on a form and accompanied by any supporting documentation required by the commissioner and shall be signed and verified by the applicant. The information required by the application shall include:

1. The name of the entity operating as an MNRO and any trade or business names used by that entity in connection with making medical necessity determinations.

2. The names and addresses of every officer and director of the entity operating as an MNRO, as well as the name and address of the corporate officer designated by the MNRO as the corporate representative to receive, review, and resolve all grievances addressed to the MNRO.

3. The name and address of every person owning, directly or indirectly, five percent or more of the entity operating as an MNRO.

4. The exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations.

5. A general description of the operation of the MNRO, which includes a statement that the MNRO does not engage in the practice of medicine or acts to impinge or encumber the independent medical judgment of treating physicians or health care providers.

6. A description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. Such program description shall evidence compliance with requirements of §6213 of this Chapter.

7. A sample copy of any contract, absent fees charged, with a health insurance issuer, nonfederal government health benefit plan, or other group health plan for making determinations of medical necessity.

8. For each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations; and

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

B. A health insurance issuer holding a valid certificate of authority to operate in this state may be authorized to act as an MNRO under the requirements of this Chapter following submission to the commissioner of appropriate documentation for review and approval that shall include, but need not be limited, to the following:

1. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

2. a general description of the operation of the MNRO which includes a statement that the MNRO does not engage in the practice of medicine or act to impinge upon or encumber the independent medical judgment of treating physicians or health care providers;

3. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. Such program description shall evidence compliance with requirements of §6213 of this Chapter;

4. a sample copy of any contract, absent fees charged, with another health insurance issuer for making determinations of medical necessity;

5. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations;

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character; and

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6211. Expiration and Renewal of License for Entities other than Health Insurance Issuers

A. Licensure pursuant to this Chapter shall expire two years from the date approved by the commissioner unless the license is renewed for a two-year term as provided in this Section.

B. Before a license expires, it may be renewed for an additional two-year term if the applicant pays a renewal fee as provided in this Section and submits to the commissioner a renewal application on the form that the commissioner requires.

C. The renewal application required by the commissioner shall include, but need not be limited to, the information required for an initial application.

D. The fee for initial licensure and the fee for renewal of licensure shall each be \$1,500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the La. Department of Insurance, Office of the Commissioner, LR 27:

§6213. Scope and Content of Medical Necessity Determination process

A. An MNRO shall implement a written medical necessity determination program that describes all review activities performed for one or more health benefit plans. The program shall include the following:

1. the methodology utilized to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services;

2. data sources and clinical review of criteria used in decision-making. The appropriateness of clinical review criteria shall be fully documented;

3. the process for conducting appeals of adverse determinations including informal reconsiderations;

4. mechanisms to ensure consistent application of review criteria and compatible decisions;

5. data collection processes and analytical methods used in assessing utilization of health care services;

6. provisions for assuring confidentiality of clinical and proprietary information;

7. the organizational structure, including any review panel or committee, quality assurance committee, or other committee that periodically accesses health care review activities and reports to the health benefit plan;

8. the medical director's responsibilities for day-to-day program management;

9. any quality management program utilized by the MNRO.

B. An MNRO shall file with the commissioner an annual summary report of its review program activities that includes a description of any substantive changes that have been implemented since the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the La. Department of Insurance, Office of the Commissioner, LR 27:

§6215. Medical Necessity Review Organization Operational Requirements

A. An MNRO shall use documented clinical review criteria that are based on sound clinical evidence. Such criteria shall be evaluated at least annually and updated if necessary to assure ongoing efficacy. An MNRO may develop its own clinical review criteria or it may purchase, license or contract for clinical review criteria from qualified vendors. An MNRO shall make available its clinical review criteria upon request to the commissioner who shall be authorized to request affirmation of such criteria from other appropriate state regulatory agencies.

B. An MNRO shall have a medical director who shall be a duly licensed physician. The medical director shall administer the program and oversee all adverse review decisions. Adverse determinations shall be made only by a duly licensed physician or clinical peer. An adverse determination made by an MNRO in the second level review shall become final only when a clinical peer has evaluated and concurred with such adverse determination.

C. An MNRO shall issue determination decisions in a timely manner pursuant to the requirements of this Chapter. At the time of the request for review, an MNRO shall notify the requestor of all documentation required to make a medical review determination. The requestor may include the covered person, an authorized representative, or a provider. In the event that the MNRO determines that additional information is required, it shall notify the requestor by telephone, within one workday of such determination, to request any additional appropriate medical information required. An MNRO shall obtain all information required to make a medical necessity determination, including pertinent clinical information, and shall have a process to ensure that qualified health care professionals performing medical necessity determinations apply clinical review criteria consistently.

D. At least annually, an MNRO shall routinely assess the effectiveness and efficiency of its medical necessity determination program and report any deficiencies or changes to the commissioner. Deficiencies shall include complaint investigations by the department or grievances filed with the MNRO that prompted the MNRO to change procedures or protocols.

E. An MNRO's data systems shall be sufficient to support review program activities and to generate management reports to enable the health insurance issuer or other contractor to monitor its activities.

F. Health insurance issuers who delegate any medical necessity determination functions to an MNRO shall be responsible for oversight, which shall include, but not be limited to, the following:

1. a written description of the MNRO's activities and responsibilities, including reporting requirements;
2. evidence of formal approval of the medical necessity determination program by the health insurance issuer;
3. a process by which the health insurance issuer monitors or evaluates the performance of the MNRO.

G. Health insurance issuers who perform medical necessity determinations shall coordinate such program with other medical management activities conducted by the health insurance issuer, such as quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

H. An MNRO shall provide health care providers with access to its review staff by a toll-free number that is operational for any period of time that an authorization, certification, or approval of coverage is required.

I. When conducting medical necessity determinations, the MNRO shall request only the information necessary to certify an admission to a facility, procedure or treatment, length of stay, frequency, level of care or duration of health care services.

J. Compensation to individuals participating in a medical necessity determination program shall not contain incentives, direct or indirect, for those individuals to make inappropriate or adverse review determinations. Compensation to any such individuals shall not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

K. An adverse determination shall not be based on the outcome of care or clinical information not available at the time the certification was requested, regardless of whether the covered person or provider assumes potential liability for the cost of such care while awaiting a coverage determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6217. Procedures for Making Medical Necessity Determinations

A. An MNRO shall maintain written procedures for making determinations and for notifying covered persons and providers and other authorized representatives acting on behalf of covered persons of its decisions.

B.1. In no less than eighty percent of initial determinations, an MNRO shall make the determination within two working days of obtaining any appropriate medical information that may be required regarding a proposed admission, procedure, or service requiring a review determination. In no instance shall any determination of medical necessity be made later than thirty days from receipt

of the request unless the patient's physician or other authorized representative has agreed to an extension.

2. In the case of a determination to certify a nonemergency admission, procedure, or service, the MNRO shall notify the provider rendering the service within one work day of making the initial certification and shall provide documented confirmation of such notification to the provider within two working days of making the initial certification.

3. In the case of an adverse determination of a nonemergency admission, the MNRO shall notify the provider rendering the service within one workday of making the adverse determination and shall provide documented confirmation of the notification to the provider within two working days of making the adverse determination.

C.1. For concurrent review determinations of medical necessity, an MNRO shall make such determinations within one working day of obtaining the results of appropriate medical information that may be required.

2. In the case of a determination to certify an extended stay or additional services, the MNRO shall notify the provider rendering the service within one working day of making the certification and shall provide documented confirmation to the provider within two working days of the authorization. Such documented notification shall include the number of intended days or next review date and the new total number of days or services approved.

3. In the case of an adverse determination, the MNRO shall notify the provider rendering the service within one working day of making the adverse determination and shall provide documented notification to the provider within one workday of such notification. The service shall be authorized and payable by the health insurance issuer without liability, subject to the provisions of the policy or subscriber agreement, until the provider has been notified in writing of the adverse determination. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider unless notified of such liability in advance.

D.1. For retrospective review determinations, the MNRO shall make the determination within 30 working days of obtaining the results of any appropriate medical information that may be required, but in no instance later than 180 days from the date of service. The MNRO shall not subsequently retract its authorization after services have been provided or reduce payment for an item or service furnished in reliance upon prior approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider or unless the coverage was duly canceled for fraud, misrepresentation, or nonpayment of premiums.

2. In the case of an adverse determination, the MNRO shall notify in writing the provider rendering the service and the covered person within five working days of making the adverse determination.

E. A written notification of an adverse determination shall include the principal reason or reasons for the determination, the instructions for initiating an appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination. An MNRO shall provide the clinical rationale

in writing for an adverse determination, including the clinical review criteria used to make that determination, to any party who received notice of the adverse determination and who follows the procedures.

F. An MNRO shall have written procedures listing the health or appropriate medical information required from a covered person or health care provider in order to make a medical necessity determination. Such procedures shall be given verbally to the covered person or health care provider when requested. The procedures shall also outline the process to be followed in the event that the MNRO determines the need for additional information not initially requested.

G. An MNRO shall have written procedures to address the failure or inability of a provider or a covered person to provide all necessary information for review. In cases where the provider or a covered person will not release necessary information, the MNRO may deny certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6219. Informal Reconsideration

A. In a case involving an initial determination or a concurrent review determination, an MNRO shall give the provider rendering the service an opportunity to request, on behalf of the covered person, an informal reconsideration of an adverse determination by the physician or clinical peer making the adverse determination. Allowing a 10-day period following the date of the adverse determination for requesting an informal reconsideration shall be considered reasonable.

B. The informal reconsideration shall occur within one working day of the receipt of the request and shall be conducted between the provider rendering the service and the MNRO's physician authorized to make adverse determinations or a clinical peer designated by the medical director if the physician who made the adverse determination cannot be available within one working day.

C. If the informal reconsideration process does not resolve the differences of opinion, the adverse determination may be appealed by the covered person or the provider on behalf of the covered person. Informal reconsideration shall not be a prerequisite to a standard appeal or an expedited appeal of an adverse determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6221. Appeals of Adverse Determinations; Standard Appeals

A. An MNRO shall establish written procedures for a standard appeal of an adverse determination, which may also be known as a first level internal appeal. Such procedures shall be available to the covered person and to the provider acting on behalf of the covered person. Such procedures shall provide for an appropriate review panel for each appeal that includes health care professionals who have appropriate expertise. Allowing a 60-day period following the date of the

adverse determination for requesting a standard appeal shall be considered reasonable.

B. For standard appeals, a duly licensed physician shall be required to concur with any adverse determination made by the review panel.

C. The MNRO shall notify in writing both the covered person and any provider given notice of the adverse determination, of the decision within thirty working days following the request for an appeal, unless the covered person or authorized representative and the MNRO mutually agree that a further extension of the time limit would be in the best interest of the covered person. The written decision shall contain the following:

1. the title and qualifying credentials of the physician affirming the adverse determination;
2. a statement of the reason for the covered person's request for an appeal;
3. an explanation of the reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the MNRO's position;
4. if applicable, a statement including the following:
 - a. a description of the process to obtain a second level review of a decision;
 - b. the written procedures governing a second level review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6223. Second Level Review

A. An MNRO shall establish a second level review process to give covered persons who are dissatisfied with the first level review decision the option to request a review at which the covered person has the right to appear in person before authorized representatives of the MNRO. An MNRO shall provide covered persons with adequate notice of this option, as described in §6221.C. Allowing a 30-day period following the date of the notice of an adverse standard appeal decision shall be considered reasonable.

B. An MNRO shall conduct a second level review for each appeal. Appeals shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination. A majority of any review panel used shall be comprised of persons who were not previously involved in the appeal. However, a person who was previously involved with the appeal may be a member of the panel or appear before the panel to present information or answer questions. The panel shall have the legal authority to bind the MNRO and the health insurance issuer to the panel's decision.

C. An MNRO shall ensure that a majority of the persons reviewing a second level appeal are health care professionals who have appropriate expertise. An MNRO shall issue a copy of the written decision to a provider who submits an appeal on behalf of a covered person. In cases where there has been a denial of service, the reviewing health care professional shall not have a material financial incentive or interest in the outcome of the review.

D. The procedures for conducting a second level review shall include the following.

1. The review panel shall schedule and hold a review meeting within 45 working days of receiving a request from a covered person for a second level review. The review meeting shall be held during regular business hours at a location reasonably accessible to the covered person. In cases where a face-to-face meeting is not practical for geographic reasons, an MNRO shall offer the covered person and any provider given a notice of adverse determination the opportunity to communicate with the review panel, at the MNRO's expense, by conference call, video conferencing, or other appropriate technology. The covered person shall be notified of the time and place of the review meeting in writing at least fifteen working days in advance of the review date; such notice shall also advise the covered person of his rights as specified in Paragraph (3) of this Subsection. The MNRO shall not unreasonably deny a request for postponement of a review meeting made by a covered person.

2. Upon the request of a covered person, an MNRO shall provide to the covered person all relevant information that is not confidential or privileged.

3. A covered person shall have the right to the following:

- a. attend the second level review;
- b. present his case to the review panel;
- c. submit supporting material and provider testimony or affidavit both before and at the review meeting;
- d. ask questions of any representative of the MNRO.

4. The covered person's right to a fair review shall not be made conditional on the covered person's appearance at the review.

5. For second level appeals, a duly licensed and appropriate clinical peer shall be required to concur with any adverse determination made by the review panel.

6. The MNRO shall issue a written decision to the covered person within five working days of completing the review meeting. The decision shall include the following:

- a. the title and qualifying credentials of the appropriate clinical peer affirming an adverse determination;
- b. a statement of the nature of the appeal and all pertinent facts;
- c. the rationale for the decision;
- d. reference to evidence or documentation used in making that decision;
- e. the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination;
- f. notice of the covered person's right to an external review, including the following:
 - i. a description of the process to obtain an external review of a decision;
 - ii. the written procedures governing an external review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6225. Request for External Review

A. Each health benefit plan shall provide an independent review process to examine the plan's coverage decisions based on medical necessity. A covered person, with the concurrence of the treating health care provider, may make a request for an external review of a second level appeal adverse determination.

B. Except as provided in this Subsection, an MNRO shall not be required to grant a request for an external review until the second level appeal process as set forth in this Chapter has been exhausted. A request for external review of an adverse determination may be made before the covered person has exhausted the MNRO's appeal, if any of the following circumstances apply:

1. the covered person has an emergency medical condition, as defined in this Chapter;
2. the MNRO agrees to waive the requirements for the first level appeal, the second level appeal, or both.

C. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.1 of this Section, the covered person's treating health care provider may request an expedited external review. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.2 of this Section, a standard external review shall be performed.

D. Nothing in this Section shall prevent an MNRO from establishing an appeal process, approved by the commissioner, that provides persons who are dissatisfied with the first level review decision an external review in lieu of requiring a second level review prior to requesting such external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6227. Standard External Review

A. Within sixty days after the date of receipt of a notice of a second level appeal adverse determination, the covered person whose medical care was the subject of such determination may, with the concurrence of the treating health care provider, file a request for an external review with the MNRO. Within seven days after the date of receipt of the request for an external review, the MNRO shall provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization. The independent review organization shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider. The independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;
2. the treating health care professional's recommendation;
3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, covered person, or the covered person's treating provider;
4. any applicable generally accepted practice guidelines, including but not limited to those developed by

the federal government or national or professional medical societies, boards, and associations;

5. any applicable clinical review criteria developed exclusively and used by MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation unless the criteria had been reviewed and certified by the appropriate licensing board of this state.

B. The independent review organization shall provide notice of its recommendation to the MNRO, the covered person or his authorized representative and the covered person's health care provider within thirty days after the date of receipt of the second level determination information subject to an external review, unless a longer period is agreed to by all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6229. Expedited Appeals

A. An MNRO shall establish written procedures for the expedited appeal of an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. An expedited appeal shall be available to and may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person.

B. Expedited appeals shall be evaluated by an appropriate clinical peer or peers in the same or a similar specialty as would typically manage the case under review. The clinical peer or peers shall not have been involved in the initial adverse determination.

C. An MNRO shall provide an expedited appeal to any request concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility. Such emergency services may include services delivered in the emergency room, during observation, or other setting that resulted in direct admission to a facility.

D. In an expedited appeal, all necessary information, including the MNRO's decision, shall be transmitted between the MNRO and the covered person, or his authorized representative, or the provider acting on behalf of the covered person by telephone, telefacsimile, or any other available expeditious method.

E. In an expedited appeal, an MNRO shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the appeal is commenced. If the expedited appeal is a concurrent review determination, the service shall be authorized and payable, subject to the provisions of the policy or subscriber agreement, until the provider has been notified of the determination in writing. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider until documented notification of such liability is provided to the covered person.

F. An MNRO shall provide written confirmation of its decision concerning an expedited appeal within two working days of providing notification of that decision if the initial notification was not in writing. The written decision shall contain the information specified in R.S. 22:3079(C)(1) through (3).

G. An MNRO shall provide reasonable access, within a period of time not to exceed one workday, to a clinical peer who can perform the expedited appeal.

H. In any case where the expedited appeal process does not resolve a difference of opinion between the MNRO and the covered person or the provider acting on behalf of the covered person, such provider may request a second level appeal of the adverse determination.

I. An MNRO shall not provide an expedited appeal for retrospective adverse determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6231. Expedited External Review of Urgent Care Requests

A. At the time that a covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review. Approval of such requests shall not unreasonably be withheld.

B. For emergency medical conditions, the MNRO shall provide or transmit all necessary documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or any other available expeditious method.

C. In addition to the documents and information provided or transmitted, the independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;
2. the treating health care professional's recommendation;
3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, the covered person, or the covered person's treating provider;
4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations;

5. any applicable clinical review criteria developed exclusively and used by the MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation, unless the criteria had been reviewed and certified by the appropriate state licensing board of this state.

D. Within seventy-two hours after receiving appropriate medical information for an expedited external review, the independent review organization shall do the following:

1. make a decision to uphold or reverse the adverse determination;
2. notify the covered person, the MNRO, and the covered person's health care provider of the decision. Such

notice shall include the principal reason or reasons for the decision and references to the evidence or documentation considered in making the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6233. Binding Nature of External Review Decisions

A. Coverage for the services required under this Chapter shall be provided subject to the terms and conditions generally applicable to benefits under the evidence of coverage under a health insurance policy or HMO subscriber agreement. Nothing in this Chapter shall be construed to require payment for services that are not otherwise covered pursuant to the evidence of coverage under the health insurance policy or HMO subscriber agreement or otherwise required under any applicable state or federal law.

B. An external review decision made pursuant to this Chapter shall be binding on the MNRO and on any health insurance issuer or health benefit plan that utilizes the MNRO for making medical necessity determinations. No entity shall hold itself out to the public as following the standards of a licensed or authorized MNRO that does not adhere to all requirements of this Chapter including the binding nature of external review decisions.

C. An external review decision shall be binding on the covered person for purposes of determining coverage under a health benefit plan that requires a determination of medical necessity for a medical service to be covered.

D. A covered person or his representatives, heirs, assigns, or health care providers shall have a cause of action for benefits or damages against an MNRO, health insurance issuer, health benefit plan, or independent review organization for any action involving or resulting from a decision made pursuant to this Chapter if the determination or opinion was rendered in bad faith or involved negligence, gross negligence, or intentional misrepresentation of factual information about the covered person's medical condition. Causes of action for benefits or damages for actions involving or resulting from a decision made pursuant to this Chapter shall be limited to the party acting in bad faith, or involved in negligence, gross negligence or intentional misrepresentation of factual information about the covered person's medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6235. Minimum Qualifications for Independent Review Organizations

A. To qualify to conduct external reviews for an MNRO, an independent review organization shall meet the following minimum qualifications:

1. Develop written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process that include, at a minimum, the following:

a. procedures to ensure that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner.

b. procedures to ensure the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases.

c. procedures to ensure the confidentiality of medical and treatment records and clinical review criteria.

d. procedures to ensure that any individual employed by or under contract with the independent review organization adheres to the requirements of this Chapter.

2. Establish a quality assurance program.

3. Establish a toll-free telephone service to receive information related to external reviews on a 24-hour day, 7-day-a-week basis that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours.

B. Any clinical peer reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care provider who meets the following minimum qualifications:

1. be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

2. be knowledgeable about the recommended health care service or treatment through actual clinical experience that may be based on either of the following:

a. the period of time spent actually treating patients with the same or similar medical condition of the covered person;

b. the period of time that has elapsed between the clinical experience and the present;

3. hold a nonrestricted license in a state of the United States and, in the case of a physician, hold a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review;

4. have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

C. In addition to the requirements of Subsection A of this Section, an independent review organization shall not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health insurance issuer, health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

D. In addition to the other requirements of this Section, in order to qualify to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor the clinical peer reviewer assigned by the independent organization to conduct the external review shall have a material professional, familial, or financial interest with any of the following:

1. the MNRO that is the subject of the external review;

2. any officer, director, or management employee of the MNRO that is the subject of the external review;

3. the health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

4. the facility at which the recommended health care service or treatment would be provided;

5. the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review;

6. the covered person who is the subject of the external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6237. External Review Register

A. An MNRO shall maintain written records in the aggregate and by health insurance issuer and health benefit plan on all requests for external review for which an external review was conducted during a calendar year, hereinafter referred to as the "register". For each request for external review, the register shall contain, at a minimum, the following information:

1. a general description of the reason for the request for external review;

2. the date received;

3. the date of each review;

4. the resolution;

5. the date of resolution;

6. except as otherwise required by state or federal law, the name of the covered person for whom the request for external review was filed.

B. The register shall be maintained in a manner that is reasonably clear and accessible to the commissioner.

C. The register compiled for a calendar year shall be retained for the longer of three years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year.

D. The MNRO shall submit to the commissioner, at least annually, a report in the format specified by the commissioner. The report shall include the following for each health insurance issuer and health benefit plan:

1. the total number of requests for external review;

2. the number of requests for external review resolved and their resolution;

3. a synopsis of actions being taken to correct problems identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6239. Emergency Services

A. Emergency services shall not be limited to health care services rendered in a hospital emergency room.

1. When conducting medical necessity determinations for emergency services, an MNRO shall not disapprove

emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a non-contracting provider within the service area of a managed care plan, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of the services if a prudent lay person would have reasonably believed that use of a contracting provider would result in a delay that would worsen the emergency or if a provision of federal, state, or local law requires the use of a specific provider.

2. If a participating provider or other authorized representative of a health insurance issuer or health benefit plan authorizes emergency services, the MNRO shall not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item, treatment, or service furnished in reliance upon approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider of emergency services.

3. Coverage of emergency services shall be subject to state and federal laws as well as contract or policy provisions, including co-payments or coinsurance and deductibles.

4. For immediately required post-evaluation or post-stabilization services, an MNRO shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the La. Department of Insurance, Office of the Commissioner, LR 27:

§6241. Confidentiality Requirements

A. An MNRO shall annually provide written certification to the commissioner that its program for determining medical necessity complies with all applicable state and federal laws establishing confidentiality and reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6243. Effective Date

A. This regulation shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

A public hearing on this proposed regulation will be held on January 25, 2001 at 9 a.m. in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, Louisiana. All interested persons will be afforded an opportunity to make comments.

Interested persons may obtain a copy of this proposed regulation, and may submit oral or written comments to

Claire Lemoine, Senior Attorney, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, telephone (225) 342-4242. Comments will be accepted through the close of business at 4:30 p.m. January 25, 2001.

The acting commissioner of Insurance hereby adopts this regulation.

J. Robert Wooley
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 77C Medical Necessity
Review Determinations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS(Summary)

It is not anticipated that Regulation 77 would result in any implementation costs or savings to local or state governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is estimated to increase self generated revenue by approximately \$150,000.00 in FY01 and every two years thereafter.

Regulation 77 calls for an initial licensing fee of \$1,500 and a renewal fee every other year of \$1,500 for each Medical Necessity Review Organization (MNRO). The department of Insurance estimates that about 100 MNROs will seek licensure in FY 2000/01. There will be some initial licenses issued the following fiscal year; DOI has no way to estimate how many MNROs would seek licenses in the second year, but expects the number to be small.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Regulation 77 calls for an initial licensing fee of \$1,500 and a bi-annual renewal fee of \$1,500 from Medical Necessity Review Organizations seeking licensure in the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Regulation 77 may result in some additional employment in the state as MNROs are licensed and may have to hire additional employees. DOI has no way of estimating the net new employment that may result this rule change.

Gillis C. Hill
Deputy Commissioner
0012#007

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Rule 10C Continuing Education
(LAC 37:XI.703-731)

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 intends to amend and re-enact its existing Rule 10. On January 26, 2001, at 10:00 a.m., the Department of Insurance will hold a

public hearing in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, Louisiana, 70804 to discuss the proposed amendments as set forth below. This intended action complies with the statutory law administered by the Department of Insurance.

The proposed amendments are needed to make certain changes, clarify the current language and to implement the Midwest Zone Continuing Education Reciprocity Agreement which will further the National Association of Insurance Commissioners' (NAIC) drive toward reciprocity between the states. The proposed amendments affect the following sections: 10.3, 10.4, 10.6, 10.9, 10.11, and 10.17. In the past, the Rule, as published in the *Louisiana Register*, showed the text of seven forms labeled and referenced as Appendices 1-7. These forms were not intended to be part of the Rule proper and are readily available to Continuing Education providers through the Department of Insurance. These forms will be removed from the Rule when republished in the *Louisiana Register*.

**TITLE 37
Insurance**

Part XI. Rules

Chapter 7. Rule 10-Continuing Education

§703. Rule 10.3 Basic Requirements

A. As a condition for the continuation of a license, a licensee must furnish the Department of Insurance, prior to the licensing renewal date, proof of satisfactory completion of approved subjects or courses having the required minimum hours of continuing education credit during each two-year licensing period.

1. - 4. ...

B. Failure to fulfill the continuing education requirements prior to the filing date for license renewal shall cause the license to write insurance to lapse. For a period of three years from the date of lapse of the license, the license may be renewed upon proof of fulfilling all continuing education requirements through the date of reinstatement and payment of all fees due. If the license has lapsed for more than three years, the license may be renewed only by fulfilling the requirements for issuance of a new license.

C. Property-casualty insurance agents shall complete 24 hours of approved instruction prior to each license renewal. Life-health insurance agents shall complete 16 hours of approved instruction prior to each license renewal. Each course to be applied toward satisfaction of the continuing education requirement must have been completed within the two-year period immediately preceding renewal of the license.

D. Agents authorized to write both life-health and property-casualty insurance shall complete 20 hours of approved property-casualty instruction prior to each property-casualty license renewal. These agents shall also complete 12 hours of approved life-health instruction prior to each life-health license renewal. Each course to be applied toward satisfaction of the continuing education requirements must have been completed within the two-year period immediately preceding renewal of the license.

E. Duplication of the same courses offered by the same provider will not be accepted as proof of compliance for continuing education requirements during the same renewal period.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

§705. Rule 10.4 Applicability

A. - C. ...

1. Specialty classes of licenses including industrial fire, industrial life and health, credit life, credit health and accident, credit property, accidental death and dismemberment and/or vendor single interest which is written solely in connection with credit transactions, title, travel, baggage, auto clubs, home service, and other limited licenses.

2. ...

a. no longer actively engaged in the insurance business as an agent, broker or solicitor and who is receiving social security benefits, if eligible; or

b. actively engaged in the insurance business as an agent, broker or solicitor and who represents or operates through a licensed Louisiana insurer.

3. ...

D. If a licensee is unable to comply with continuing education requirements during the licensing period because of a disability, medical condition or similar reason, the commissioner may waive the continuing education requirements or may require the licensee to complete the required number of credit hours through correspondence courses. The following is necessary to request a waiver:

1. a current physician's statement supporting the licensee's disability/illness;

2. a description, in the licensee's own words of the disability/illness and the reason said disability/illness prevented the licensee from attending a classroom or completing a home study (correspondence) course;

E. The Department of Insurance anticipates and expects that licensees will maintain high standards of professionalism in selecting quality education programs to fulfill the continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

§709. Rule 10.6 Program Requirements

A. - D.2.a.iii ...

iv. Any other such subjects which may be related to the insurance industry. This may include but will not be limited to subjects such as securities and finance.

D.2.b. - E. ...

1. Any course used to prepare for taking an insurance or securities licensing examination.

E.2 - F.2. ...

a. Instructors must be qualified, both with respect to programs content and teaching methods. Instructors will be considered qualified if, through formal training or experience, they have obtained sufficient knowledge to instruct the course competently.

F.2.b. - G.4. ...

a. If a provider submits a course with materials published by a recognized publisher of insurance education materials, each and every student must be provided with a complete original text from that publisher as part of the registration fee for the approved continuing education course. This text shall be retained by the student and shall not be returned or resold to the provider. No substitute texts, outlines, summaries or copyright infringements will be allowed.

G.4.b. - M. ...

N. The Department of Insurance may accept the Midwest Zone Standard Continuing Education Filing Forms or any other uniform, standardized forms approved by the Department of Insurance and the necessary attachments as the forms required for approval of courses submitted by a nonresident continuing education provider, for courses previously awarded credit by the continuing education provider's home state. Courses that have not previously been awarded credit in the provider's home state must be approved pursuant to all other provisions of this Rule.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

§715. Rule 10.9 Training Facility Requirements

A. - E. ...

F. Training aids, overhead viewing equipment availability and a proper visual layout of the classrooms should be addressee.

G ...

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), LR 27:

§719. Rule 10.11 Controls And Reporting

A. ...

B. Licensees must submit with the application for renewal of a license a signed continuing education statement, under oath, on a form prescribed by the department (Appendix 6 to this regulation), listing the courses that have been taken in compliance with this regulation copies of their certificate of completion (Appendix 5 to this regulation) for each of the courses completed.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), LR 27:

§731. Rule 10.17 Periodic Review

A. The Rule set forth herein shall be reviewed by the Insurance Education Advisory Council every three years to determine if modifications to the Rule are necessary.

B. In the event modification of this Rule is thought to be necessary, a notice of a meeting to consider the

modifications recommended by the Insurance Education Advisory Council shall be given in accordance with the provisions of R.S. 22:1354.C.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

Persons interested in obtaining copies of the Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m. January 26, 2001.

Family Impact Statement

1. Describe the effect of the proposed rule on the stability of the family. The proposed rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed rule on the authority and rights of parents regarding the education and supervision of their children. The proposed rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed rule on the functioning of the family. The proposed rule should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed rule on family earnings and budget. The proposed rule should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed rule on the behavior and personal responsibility of children. The proposed rule should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed rule on the ability of the family or a local government to perform the function as contained in the rule. The proposed rule should have no impact upon the ability of the family or a local government unit to perform the function as contained in the rule.

J. Robert Wooley
Acting Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Rule 10C Continuing Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is not anticipated that the amendments and re-enactment of Rule 10 would result in any implementation costs or savings to local or state governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments and re-enactment of Rule 10 should have no effect on revenue collections of local or state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments and re-enactment of Rule 10 should have no impact on competition and employment.

J. Robert Wooley
Acting Commissioner
0012#086

Robert E. Hossee
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Crime Victims Services Bureau
(LAC 22:I.Chapter 23)

In accordance with the Administrative Procedures Act, R.S. 49:950, et seq., the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to promulgate new rules and regulations with regard to the operation of the Crime Victim Services Bureau.

In accordance with the Administrative Procedure Act, LSA-R.S. 49:953(A)(1)(a)(viii) and LSA-R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of this rule will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Part I. Corrections

Chapter 23. Crime Victims Services Bureau

§2301. Purpose

A. To establish the primary functions of the Crime Victims Services Bureau (Program Summary attached) and the Department's broad response to victims, witnesses, and others directly injured by the criminal acts of persons under the state's authority.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2303. Applicability

A. Deputy Secretary, Undersecretary, Assistant Secretaries, Director/Division of Probation and Parole, Director/Division of Youth Services, Board of Parole, Board of Pardons, and all Wardens.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2305. Definitions

Designated Family Member—a family member or legal guardian of a minor victim, a homicide victim, or a person who is disabled—such designation usually made by local authorities.

Inmate—in this context, anyone committed to the custody of the Department whether as an adult or a juvenile.

Victim—a person against whom a felony offense or a felony-grade delinquent offense has been committed.

Victim's Family—spouse, parent, child, stepchild, sibling, or legal representative of the victim, except when the person is in custody for an offense or is the defendant.

Victim Notice and Registration Form—a form promulgated by the Louisiana Commission on Law Enforcement (LCLE) and provided by a judicial or law enforcement agency, or a form available from the Department (attached), on which a person may indicate a request to be afforded the rights prescribed in law and/or policy for victims, witnesses, and other designated persons. In the context of this regulation, the term also includes letters requesting notification about an inmate's movement through the system and can include victim requests identified in presentence, preparole, or other investigative reports prepared by the Division of Probation and Parole.

Witness—a person who has relevant information about a crime that was committed and who, consequently, could be or has been called as a witness for the prosecution.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2309. Policy

A. The Crime Victims Services Bureau was created in the Office of the Secretary to facilitate access to information regarding victims' rights and responsibilities as participants in the criminal justice system. It is the Secretary's policy to ensure compliance with applicable laws concerning the rights of victims and witnesses, to facilitate access to information and appropriate assistance through the operations of the Crime Victims Services Bureau, and to encourage programming throughout the agency to enhance awareness of victim issues among staff and inmates.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2309. General Procedures

A. The Department will maintain a toll-free telephone line as part of the Crime Victims Services Bureau to facilitate access to registration and information. The bureau will help persons register for notification and will answer questions about the Department's policies and programs and related laws. Referrals will be made, as appropriate, to other units within the agency, the Board of Parole, the Board of Pardons, the prosecuting district attorney, and/or other crime victim programs and agencies. Notifications will be handled by the field units.

B. When a victim notice and registration form is received in any unit of the Department, staff will respond timely and in a manner consistent with the requirements of the Crime Victims Services Bureau and department regulations governing release of information and victims' and witnesses' rights. However, the filing of a victim notice and registration form by an incarcerated adult or a juvenile in secure care shall not enable that individual to receive information about another individual incarcerated or in secure care under the Department's authority.

C. As provided by law, a victim or a designated family member must use the victim notice and registration form promulgated by LCLE to indicate their wish to review and comment on information in the postsentence report relating

to the crime against the victim. The Division of Probation and Parole will oversee access to this information.

D. Additional assistance is available to employees who are victimized while on duty or on personal time, as described in Department Regulation A-02-024 "Critical Incident Stress Debriefing."

E. Persons receiving unsolicited communications by telephone or mail from inmates in state custody may contact the Crime Victims Services Bureau for assistance in having the contacts stopped. The bureau will work with the appropriate Warden to see that reasonable and necessary steps are taken to address the situation. This may involve disciplinary action, including loss of good time.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2311. Confidentiality

A. Both the information contained in a victim notice and registration form and the fact that a notification request has been made are confidential. Any questions from outside the Department about whether particular persons have requested notification or whether there has been a notification request for particular inmates should be referred to the Crime Victims Services Bureau.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2313. Restitution

A. When restitution is required as a condition of probation, parole, or work release, such cash or service shall be monitored and/or collected by the Division of Probation and Parole or the Division of Youth Services, as appropriate.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2315. Parole and Pardon Hearings and Related Matters

A. The Board of Parole and the Board of Pardons will comply with all laws regarding written notification prior to scheduled hearings, including the requirement that notice be given to persons who file a victim notice and registration form and to the appropriate district attorney. Notifications regarding pending hearings shall be made through action of the Division of Probation and Parole or directly, as appropriate.

B. When a hearing is scheduled by either board, the victim or victim's family shall be allowed to make written and oral statements concerning the impact of the crime and to rebut statements or evidence introduced by the inmate. The victim or victim's family, a representative of a victim advocacy group, and the district attorney or his representative may appear before the boards in person or by telephone from the district attorney's office.

C. As required by law, the Pardon Board will notify the Crime Victims Services Bureau before hearing an applicant.

D. Wherever Parole Board or Pardon Board hearings are held, all reasonable steps will be taken to see that victims and their family members and inmates and their family members do not have direct contact before or after the hearing. This practice should, where possible, begin at the

entrance to the hearing site and include provision of a separate waiting area and access to separate restroom facilities.

E. Hearing sites are encouraged to provide victim access to a staff person who can explain the hearing process and answer other questions.

Note: Parole Board and Pardon Board procedures provide detailed information about each board's policies and practices.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2317. Notifications Regarding Adult Inmates

A. When victim notice and registration form is received at an institution, it shall become part of the inmate's permanent record, and the Notes section of the stamp format shall be marked to indicate the existence of a notification request.

B. The Crime Victim Services Bureau will acknowledge receipt of each victim notice and registration form with a letter that includes the possible release dates of the inmate named on the form. If release dates have not been calculated at the time a form is received, the bureau will acknowledge the form, and the unit that calculates release dates will send them to the victim.

C.1. When the Department receives a victim notice and registration form for an inmate sentenced on or after August 15, 1997, the Department is required to provide the inmate's projected release dates to the victim and the sentencing court within 90 days from the inmate's commitment date.

2. If the dates are available when the bureau receives the form, the bureau will send the information to the victim and the sentencing court. Otherwise, staff who calculate release dates and maintain the inmate's file are responsible for providing the required information to the victim and the court.

3. If a mistaken calculation is discovered after projected release dates have been sent to a victim, corrected release dates should be sent by the unit that makes the correction. This provision does not include changes to an inmate's diminution of sentence date resulting from earning or losing good time credits. However, if educational good time is credited after letters have been sent to inform registered victims of an inmate's imminent release, a second letter should be sent to inform them of the new, closer release date. The second letter need not be certified.

D. In the event an inmate named on a victim notice and registration form makes a court appearance that subsequently affects sentence length or is approved for furlough, transferred to work release, or released from prison, persons who have filed a victim notice and registration form shall be notified by certified mail. Release from prison includes parole, diminution of sentence to parole supervision, diminution of sentence, full term, court ordered release (including release on appeal bond and release to another jurisdiction), and death while incarcerated.

1. Notice of transfer to work release should be mailed on the day of the inmate's transfer.

2. Notice of furlough and scheduled release from prison should be mailed prior to that event.

E.1. R.S. 15:574.4(B) requires the Department to notify the victim or the victim's family about the release of any inmate who is required to serve at least 85 percent of his

sentence for a crime of violence committed on or after January 1, 1997. (The victim does not have to make this request or provide an address.)

2. If there is not a registered victim or sufficient information in the file to locate the victim, the probation and parole district of the parish where the crime occurred will be contacted and asked to provide the name and address of the victim or of a family member, if the victim is a minor or deceased. The process of identifying victims should begin ninety days prior to the inmate's projected release on diminution of sentence as if on parole supervision whenever possible.

F. In the event that an inmate named on a victim notice and registration form escapes from institutional custody, the persons who filed the forms shall be notified immediately at the most current address or phone number on file by the most reasonable and expedient means possible. When the inmate is recaptured, written notice shall be sent within 48 hours of regaining custody. (Notifications required by Department Regulation No. C-02-001 "Reporting and Documenting Escapes" also apply.)

G Responsibility for notifications included in Subsections D.-F. above shall be as follows:

1. The Warden of the institution where the inmate is assigned.

2. The Warden of Elayn Hunt Correctional Center if the inmate is assigned to the State Police Barracks, a local detention facility (including their work release programs, a correctional institution in another jurisdiction, or a contract community rehabilitation center (CRC)).

3. The Probation and Parole Director when an inmate is assigned to a non-contract bed in the Orleans Parish Prison work release program or in the Lafayette Community Corrections Center or City of Faith.

Exception: The Probation and Parole Director shall provide notice when any inmate is granted a furlough from Orleans Parish Prison Work Release, Rapides Parish Sheriff's Work Release, West Baton Rouge Parish Sheriff's Work Release, Lafayette Parish Sheriff's Work Release, St Tammany Parish Sheriff's Work Release, CINQ-Lake Charles, and City of Faity.

H. In the event that an inmate is recommended for a regular or a medical furlough, medical parole, or work release, the Warden shall determine whether there is a victim notice and registration form on file and shall so note when submitting a recommendation to the Secretary for review. The Warden should indicate the city or town of residence of any registered victim.

I. If an inmate named in a victim notice and registration form was sentenced for a sex offense, the provisions of Department Regulation No. B-08-009 "Sex Offender Notification and Registration Requirements" also apply.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2319. CAJUN II Procedures C Adult Inmates

A. Any addition of or modification to a victim record in CAJUN where a victim notice and registration form exists must be supported by written documentation filed with the Crime Victims Services Bureau and included in the inmate's institutional record or, if the inmate is under supervision when a new form or a revision is received, in the inmate's master record in the supervising district.

B. The unit or office that receives an initial victim notice and registration form or a revision shall be responsible for entering the victim information in CAJUN and for sending a copy of the form to the Crime Victims Services Bureau. Forms received first by the Crime Victims Services Bureau or directed there from the Parole Board will be entered by the bureau and copied to the appropriate units.

C. Any victim notice and registration form, promulgated by LCLE and received by the bureau, will also be copied by the bureau to the probation and parole district serving the court in which the inmate was sentenced.

D. If a person who has previously filed a victim notice and registration form withdraws his request, he must do so in writing, after which his individual victim record in CAJUN will be modified so that CAJUN will not generate notification letters.

E. When there is a victim notice and registration form on record, the following applies:

1. The request will remain active until expiration of sentence.

2. If an inmate is released before FTD and subsequently returned to institutional custody, the victim will not be notified of the return but will be notified of subsequent changes as provided in Section 11. of this regulation.

NOTE: A blank instead of a "Y" in the CVNR field means that a victim's name and contact information have not been entered in CAJUN.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2321. Rights of Victim's Family When an Inmate's Sentence is Death

A. At least ten days prior to an execution, the Secretary shall give written notice or verbal notice (followed by written notice placed in the United States mail within five days thereafter) of the time, date and place of the execution to the victim's parents or guardian, spouse, and any adult children who have indicated they desire notice. A minimum of two representatives of the victim's family shall have the right to be present.

B. A complete explanation of victims' rights and the Department's responsibilities in instances where an inmate has been sentenced to death appears in Department Regulation No.C-03-001 "Death Penalty."

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2323. Processing of Requests for Notification Regarding Juveniles

A. General

1. Victim notification laws apply only when a juvenile is in secure care.

2. A request for notice involving an inmate adjudicated as a juvenile must be filed using a victim notice and registration form promulgated by LCLE, in compliance with La. Ch. C. Art. 811.1 and La. R.S. 46:1842(8) and 1844(N)(2).

B. When the Crime Victims Services Bureau receives a victim notice and registration form regarding a juvenile, the bureau will retain a copy and forward the original to the Office of Youth Development(OYD). OYD will verify the offender information in the juvenile database tracking system (JIRMS), enter the victim request in JIRMS, and forward the request to the juvenile institution where the inmate is housed.

C. When an institution receives a victim request involving a juvenile, staff will file it in the inmate's case file and track the case according to regulation and policy.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2325. Notifications Concerning Juvenile Inmates in Secure Care

A. In the event of an escape, the assigned institution shall notify the registered victim immediately by the most reasonable and expedient means possible.

B. In the event of early release, either by successful appeal or discharge, the assigned institution shall notify the registered victim by certified mail.

C. The Warden of the institution where the inmate is assigned is responsible for required notifications.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Post Office Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., January 20, 2001.

Program Summary

The Crime Victims Services Bureau (CVSB) is a public service of the Department of Public Safety and Corrections, Corrections Services. It was established to offer victims and their families a central place to contact through which they can register for victim notice, ask questions about the correctional system and particular inmates in the system, and learn more about their rights and responsibilities as participants in the criminal justice system.

The CVSB provides information about the following: notification options available to victims and witnesses after an inmate has been sentenced to state custody; participation in the parole and pardon processes; location, release dates, and other facts allowed by law regarding specific inmates. The Bureau answers questions about the Department's policies and programs and the laws that govern them and makes referrals to other agencies and crime victims programs as appropriate. The bureau will assist persons who wish to stop unsolicited communications from inmates.

Where not prohibited by law, the Department will respond to notification requests made by letter and telephone or submitted on its own or on other jurisdictions' victim notice forms.

Due to confidentiality laws protecting juvenile records, the Department will notify a victim directly when a juvenile offender named on a crime victim notice form is discharged from institutional custody. The Department does not, however, have the authority to provide direct notice of a juvenile offender's escape, reassignment, or furlough; therefore, the Department will notify the prosecuting district attorney instead. Victims (or their families) should notify the district attorney of their wish to be notified of these matters.

The following are examples of issues within the scope of the Crime Victims Services Bureau:

1. Notification about an adult inmate's successful court appeal, furlough, release from custody, escape and/or recapture.
2. Information about parole and pardon eligibility and hearing processes.
3. Inquiries about the Crime Victims Reparations Fund and restitution, required as a condition of probation, parole, or work release.
4. Diminution of sentence ("good time") issues and their affect on sentence length.
5. Sex offender reporting and related requirements.
6. Requests from persons who wish to halt unsolicited communications from inmates in state custody.

The bureau maintains a toll-free telephone number: 888-342-6110. Using that number or, in the Baton Rouge calling area, 342-1056, callers can speak with someone about their concerns or make an appointment to come to the agency. The office is open during regular business hours, and voice mail enables callers to leave messages at any time.

Victim/Witness Notification Request Form

As an individual affected by the criminal acts of another person, you have a right to participate in the criminal justice system. If the individual who committed the crime has been sentenced to state custody and you want information about his status or the Department's policies and programs or your rights and responsibilities, you may contact the Crime Victims Services Bureau.

If you would like to be notified in case (1) an adult inmate who committed the crime that involved you makes a successful court appeal, is furloughed, is released to the community, escapes, or is scheduled for a parole or pardon hearing or (2) a juvenile offender who committed the crime makes a successful court appeal or is discharged, paroled, or released, complete this form and mail it to the address below. (Please notify the Department of subsequent changes in address and telephone numbers.)

Crime Victims Services Bureau
P.O. Box 94304, Baton Rouge, LA 70804-9304
Telephone Numbers: in Baton Rouge area - 342-1056; long distance, toll-free – 888-342-6110
Your request will be kept confidential.

Name of person requesting notification: _____
Address: _____ Telephone Nos. (____) _____
_____ (____)

You are (check one): _____ Direct victim of offense _____ Witness to offense _____ Parent/Guardian of victim
_____ Other (explain): _____ Relationship to inmate (if any): _____

Was the person who committed the crime sentenced as an adult or a juvenile? _____

If a juvenile, signature of District Attorney's representative: _____

Inmate name: _____ Inmate /DOC # _____

Inmate DOB: _____ Offense** _____

Length of Sentence/Commitment: _____ Sentencing Date: _____

Parish of Conviction /Judicial District/and Court Docket No.: _____

** If the offense was a sex offense, was the victim under age 18 at the time the crime was committed?

_____ No. _____ Yes. If Yes, give victim's DOB (/ /) & age at the time of the crime: _____

Are you or any of your family members employed by the Department of Public Safety and Corrections at a state prison?

If yes, please indicate which facility: _____

----- (for agency use) -----

Date request received in DPS&C: _____ By whom? _____

Richard L. Stalder
Secretary

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

**Disciplinary Rules and Procedures for
Adult Inmates (LAC 22:I.341-365)**

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Crime Victims Services Bureau**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

the Crime Victims Services Bureau (CVSB) has been operational within the Department of Public Safety and Corrections since 1993. Publication of this rule will not affect current operations, affect staffing or have any additional costs over what is currently budgeted for operation.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no additional costs or economic benefits directly affecting persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no anticipated impact on competition and employment.

Robert B. Barbor
Executive Counsel
0012#092

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and in order to comply with the Louisiana Supreme Court Ruling in *Tony Giles v. Cain*, 1999-2328 (La. 6/2/00), 762 So.2d 1116, rehearing denied 1999-2328 (La. 8/31/00), 766 So.2d 1269, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to repeal in their entirety LAC 22:I.341-365 and to promulgate new rules and regulations, all relative to the manual of Disciplinary Rules and Procedures of Adult Inmates.

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Post Office Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., January 18, 2001.

In accordance with the Administrative Procedures Act, LSA-R.S. 49:953(A)(1)(a)(viii) and LSA-R.S. 49:972, the Department of Public Safety & Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of these disciplinary rules and procedures for adult inmates will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Disciplinary Rules and Procedures for
Adult Inmates**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no estimated costs associated with implementation of the revised Disciplinary Rules and Procedures for Adult Inmates. The primary purpose for the revisions is to clarify what are prohibited activities and put the inmate population on notice thereof. It is not anticipated that these revisions will significantly increase or decrease the level of disciplinary proceedings in the institutions so as to affect operational costs.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no additional costs or economic benefits directly affecting persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no anticipated impact on competition and employment.

Robert B. Barbor
Executive Counsel
0012#091

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

Expiration of Permit
(LAC 55:IX.121)

In accordance with the provisions of R. S. 49:950 et seq., the Administrative Procedure Act, and R. S. 40:1846 relative to the authority of the Liquefied Petroleum Gas Commission to make and enforce reasonable rules and regulations governing the storage, sale, and transportation of liquefied petroleum gases, notice is hereby given that the Commission proposes to amend its rules. The proposed rule changes have no known impact on family formation, stability, and autonomy as described in R. S. 49:972.

The proposed rule changes will do four things:

1. will establish a time on the expiration of a permit or registration;
2. will establish an administrative penalty of 5 percent per month or fraction thereof up to a maximum of 25 percent, on a permit or registration fee for which a permit or registration was not renewed prior to its expiration;
3. will establish an administrative interest charge of 1 percent per month or fraction thereof, on the permit or registration fee for which a permit or registration was not renewed prior to its expiration;
4. will provide for a civil violation of the Revised Statutes and the Liquefied Petroleum Gas Commission rules and regulations after the expiration of a permit or registration renewal date by five days.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter B. Dealers

§121. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the permit or registration fee due added for each month or fraction thereof, not to exceed 25 percent of the amount of the permit or registration fee due.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent of the permit or registration fee due added for each month or fraction thereof to the amount of the permit or registration fee due.

D. After the expiration of a permit or registration fee renewal date, by five days, any dealer continuing in operation without the payment of the fee, any administrative penalty, and any administrative interest due, shall be considered as operating in violation of R.S. 40:1841-1853 of the Revised Statutes and the rules and regulations of the Liquefied Petroleum Gas Commission. The commission may assess a civil penalty as provided in R.S. 40:1846.1.E or invoke any applicable provision of LAC 55:IX.117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 16:1063 (December 1990), LR 24:464 (March 1998), amended LR 26:

The commission will hold a public hearing January 25, 2001, 1723 Dallas Drive, Baton Rouge, LA, at 8:30 a.m. in regard to these changes.

Written comments will be accepted through January 15, 2001 and should be sent to Charles M. Fuller at P.O. Box 66209, Baton Rouge, LA 70896. All interested persons will be afforded an opportunity to be heard at the public hearing. A preamble has not been prepared for the intended actions.

Charles M. Fuller
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Expiration of Permit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation cost to the Department of Public Safety IN FY 00-01. There will be no implementation cost to any local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No significant increase or decrease in revenues to the Liquefied Petroleum Gas Commission is anticipated in FY00-01 not for each future year as a result of the proposed action. However, there could be an increase in revenues to the state governmental unit associated with the proposed rule changes. This possible increase in revenues cannot be calculated because there is no method to determine the amounts of the permits or registrations that would be subject to the proposed changes. It is anticipated that if there were increases, any increase would be minimal. there will be no increase or decrease in revenues to any local governmental unit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant increase or decrease in costs or benefits to the affected persons or groups in FY00-01 or future FYs is anticipated. There will be no costs or economic benefit to any other group, person, or non-governmental unit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact or effect on competition and employment because of the proposed actions.

Charles M. Fuller
Director
0012#063

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

**Requirements, Classes of Permits, Expiration of Permit
(LAC 55:IX.1501, 1513 and 1519)**

In accordance with the provisions of R. S. 49:950 et seq., the Administrative Procedure Act, and R. S. 3:1354 relative to the authority of the Liquefied Petroleum Gas Commission to promulgate rules and regulations governing the storage, utilization, sale or transportation of anhydrous ammonia, the fabrication and installation of systems for the storage and utilization of anhydrous ammonia, and installation of all other anhydrous ammonia equipment, notice is hereby given that the Commission proposes to amend its rules. The proposed rule changes have no known impact on family formation, stability, and autonomy as described in R. S. 49:972.

The proposed rule changes will do seven things:

1. will make a technical change in the current rules by adding an (X) after Class A-3 in ' 1507.H;
2. will make a technical change in the current rules by deleting reference to one-half of one percent of the gross annual sales of anhydrous ammonia;

3. will establish a time on the expiration of a permit or registration;

4. will establish an administrative penalty of 5 percent per month or fraction thereof up to a maximum of 25 percent, on a permit or registration fee for which a permit or registration was not renewed prior to its expiration;

5. will establish an administrative interest charge of 1 percent per month or fraction thereof, on the permit or registration fee for which a permit or registration was not renewed prior to its expiration;

6. will provide for a civil violation of the Revised Statutes and the Liquefied Petroleum Gas Commission rules and regulations after the expiration of a permit or registration renewal date by five days;

7. will delete the words "or should know" from ' 1531.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 15. Sale, Storage, Transportation and Handling of Anhydrous Ammonia

Subchapter A. New Dealers

§1501. Requirements

H. All service and installation personnel, anhydrous ammonia transfer personnel and tank truck drivers must have a card of competency from the office of the director. All permit holders, except Class A-3X permit holders, must have at least one card of competency issued to their permit. A card of competency will be issued to an applicant upon receipt of a \$20 examination fee and successfully passing the competency test, providing the applicant holds some form of identification acceptable to the commission. The commission may accept as its own a reciprocal states examination which contains substantially equivalent requirements. This must be evidenced by a letter from the issuing authority or a copy of a valid card issued by the reciprocal state. All applicable fees must be paid prior to issuing the card.

H. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 25:2413 (December 1999), amended LR 27:

§1513. Classes of Permits

A. - A.1.c.vi. ...

d. Must pay permit for first years operation in the amount of \$300 to the Liquefied Petroleum Gas Commission of the state of Louisiana. For succeeding years the permit fee shall be \$300.

A.1.e. - 6.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 25:2413 (December 1999), amended LR 27:

Subchapter B Dealers

§1519. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the permit or registration fee due added for each month or fraction thereof, not to exceed 25 percent of the amount of the permit or registration fee due.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent of the permit or registration fee due added for each month or fraction thereof to the amount of the permit or registration fee due.

D. After the expiration of a permit or registration fee renewal date, by five days, any dealer continuing in operation without the payment of the fee, any administrative penalty, and any administrative interest due, shall be considered as operating in violation of R.S. 3:1356(A) of the Revised Statutes and the rules and regulations of the Liquefied Petroleum Gas Commission. The commission may assess a civil penalty as provided in R.S. 3:1357 or may suspend, cancel or revoke said permit or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 26:

§1531. Improper Installation

A. A dealer shall not serve any anhydrous ammonia system which the dealer knows is not installed pursuant to the Liquefied Petroleum Gas Commission regulations or is in a dangerous condition. All new installations or reinstallations must be checked by the dealer for tightness of lines, poor workmanship, use of unapproved pipe or equipment or use of poor piping design. All improper installations shall be corrected before the dealer services such installation or reinstallation with anhydrous ammonia for the first time. Any subsequent servicing dealer shall not be responsible for unauthorized changes in or failures of an existing system or connected equipment.

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 27:

The commission will hold a public hearing January 25, 2001, 1723 Dallas Drive, Baton Rouge, LA, at 8:30 a.m. in regard to these changes.

Written comments will be accepted through January 15, 2001 and should be sent to Charles M. Fuller at P.O. Box 66209, Baton Rouge, LA 70896. All interested persons will be afforded an opportunity to be heard at the public hearing. A preamble has not been prepared for the intended actions.

Charles M. Fuller
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Requirements, Classes of Permits, Expiration of Permit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs to the Department of Public Safety in FY 00-01. There will no implementation costs to any local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No significant increase or decrease in revenues to the Liquefied Petroleum Gas Commission is anticipated in FY 00-01 nor for each future year as a result of the proposed action. However, there could be an increase in revenues to the state governmental unit associated with the proposed rule changes. This possible increase in revenues cannot be calculated because there is no method to determine the amounts of the permits or registrations that would be subject to the proposed changes. It is anticipated that if there were increases, any increase would be minimal. There will be no increase or decrease in revenues to any local governmental unit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant increase or decrease in costs or benefits or the affected persons or groups in FY 00-01 or future FYs is anticipated. There will be no costs or economic benefit to any other group, person, or non-governmental unit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact or effect on competition and employment because of the proposed actions.

Charles M. Fuller
Director
0012#064

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of State Police

Weights and Standard's Mobile Police Force
(LAC 55:I.Chapter 23)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq. and R.S. 32:384(E) gives notice of its intent to enact LAC 55, Part I Chapter 23, §2323, the rule creating the approval process by State Police of a safety device to be used in lieu of safety chains.

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments to Paul Schexnayder, Post Office Box 66614, Baton Rouge, Louisiana 70896. Written comments will be accepted through January 15, 2001.

Family Impact Statement For Administrative Rules

The effect of these rules on the stability of the family.

These rules will have no effect on the stability of the family.

The effect of these rules on the authority and rights of parents regarding the education and supervision of their children.

These rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

The effect of these rules on the functioning of the family.

These rules will have no effect on the functioning of the family.

The effect of these rules on family earnings and family budget.

These rules will have no effect on family earnings and family budget.

The effect of these rules on the behavior and personal responsibility of children.

These rules will have no effect on the behavior and personal responsibility of children.

The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules.

These rules will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Jerry Jones
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Weights and Standard's Mobile Police Force

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no additional costs nor savings regarding the adoption of these rules as very similar rules were previously administered by the Department of Transportation. The last section of the rules is being submitted by the Department because of the mandate in R.S. 40:1321.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue or costs as the Department was previously enforcing similar Department of Transportation rules.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs or economic benefits to an person or group.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

Jill P. Boudreaux
Deputy Undersecretary
0012#061

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Tax Commission**

Ad Valorem Taxation
(LAC 61:V.309, 703, 907, 1103,
1307, 1503, 2503, 2705 and 2707)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950, et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal sections of the Louisiana Tax Commission Real/Personal Property Rules and Regulations for use in the 2001 (2002 Orleans Parish) tax year.

The full text of these proposed rules may be viewed in the Emergency Rule Section of this issue of the Louisiana Register.

Interested persons may submit written comments on the proposed rules until 4 p.m., January 4, 2001, to E.W. "Ed" Leffel, Property Tax Specialist, Louisiana Tax Commission, Box 66788, Baton Rouge, LA 70896.

Malcolm B. Price, Jr.
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Ad Valorem Taxation

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation costs to the agency are the costs of preparation, reproduction and distribution of updated regulations and complete manuals. These costs are estimated to be \$7,500 for the 2000-2001 fiscal year and are being reimbursed through an existing user service fee of \$15 per update set.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

These revisions will generally increase 2001 certain personnel property assessments for property of similar age and condition in comparison with equivalent assessments in 2000. Composite multiplier tables for assessment of most personal property will decrease by 1.1%. Specific valuation tables for assessment of oil and gas wells will generally increase by an estimated 11.4%, drilling rigs by an estimated 23.5% and pipelines by 10%. The net effect of these revisions is estimated to increase assessments by 0.5% and tax collections by \$2,067,000 on the basis of existing statewide average millage. However, these revisions will not necessarily effect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset by millage adjustment provisions of Article VII, Section 23 of the state Constitution.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Under authority granted by R.S. 47:1838, the Tax Commission will receive state revenue collections generated by assessment service fees estimated to be \$319,000 from public service companies, and \$97,000 from financial institutions and insurance companies all of which are assessed by the Tax Commission.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

The affects of these new rules on assessments of individual items of equivalent personal property will generally be higher in 2001 than in 2000. Specific assessments will depend on the age and condition of the property subject to assessment.

The estimated costs that will be paid by affected persons as a result of the assessment and user service fees as itemized above total \$416,000 to be paid by public service property owners, financial institutions and insurance companies for 2000/2001.

James D. Peters
Administrator
0012#033

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Family Independence Temporary Assistance (FITAP) and Kinship Care Subsidy (KCSP) Programs CRecovery in Administrative Error (LAC 67:III.1503, 1505 and 5383)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP) and Subpart 13, the Kinship Care Subsidy Program (KCSP).

Pursuant to the authority granted to the Department by the Louisiana Temporary Assistance to Needy Families Block Grant, the agency proposes that it shall no longer recover FITAP or KCSP grant amounts which are overpaid as a result of administrative error. Implementation of this change will relieve the financial strain on affected families as the Agency will not seek repayment of benefits erroneously paid as a result of agency error and through no error or fault of the recipients. With the action amending §1503, §1505 is no longer applicable and will be repealed.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 15. General Program Administration

Subchapter B. Recovery

§1503. Recovery of Overpayments

A. All FITAP overpayments shall be subject to collection either by recoupment or recovery with the exception of:

1. inadvertent household error claims of \$250.00 or less; and
2. administrative error claims.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Family Support, LR 24:353 (February 1998), LR 27:

§1505. Adjustments for Incorrect Payments

Repealed

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402) and 45 CFR 205-206, 233-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), repealed by the Department of Social Services, Office of Family Support, LR 27:

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

Subchapter C. Recovery

§5383. Recovery of Overpayments

A. All KCSP overpayments shall be subject to collection either by recoupment or recovery with the exception of:

1. inadvertent household error claims of \$250.00 or less; and
2. administrative error claims.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

Interested persons may submit written comments by January 25, 2001, to the following: Vera W. Blakes, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the person responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on January 25, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code (225) 342-4120 (Voice and TDD).

Family Impact Statement

1. What effect will this rule have on the stability of the family? This change could have a positive impact on the stability of eligible families because it will relieve the financial strain which may have been caused by the requirement to repay these grants.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be 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? The functioning of the family could be positively impacted due to a reduction in the financial strain created by the recovery action.

4. What effect will this have on family earnings and family budget? This will favorably impact the family budget.

5. What effect will this have on the behavior and personal responsibility of children? The rule has no impact on a child's behavior and personal responsibility.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, these programs are the sole function of the agency.

J. Renea Austin-Duffin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Family Independence Temporary
Assistance (FITAP) and Kinship Care Subsidy (KCSP)
Programs C Recovery in Administrative Error**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The estimated implementation cost to state government is the cost of publishing the rule and printing revisions to policy. This cost is minimal and funds for such actions are included in the program's annual budget. There are no costs or savings to local governmental units.

Family Independence Temporary Assistance Program (FITAP) and Kinship Care Subsidy Program (KCSP) benefits are paid with funds from the federal Temporary Assistance for Need Families (TANF) Block Grant. The agency is not required to recover these payments, and the elimination of the recovery requirement on administrative error cases does not reduce the amount of Louisiana's block grant.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The repayment of administrative error claims is voluntary. In the 12-month period prior to October 2000, the agency recovered only \$12,000 from overpayments due to administrative error. As a result of this rule, these amounts will represent lost revenue: \$2,000 in FY 00/01 and \$12,000 per subsequent year.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Affected families will benefit from the proposed action. Those who have been overpaid either remain eligible for assistance, and therefore have limited income, or are attempting to make the transition from dependency on welfare to self-sufficiency. In an attempt to relieve further financial strain on these families, the agency will not seek repayment of benefits which were paid to them as a result of agency error and through no fault of that family.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There will be no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
0012#071

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Food Stamps Certification of Eligible Households
(LAC 67:III.2005 and 2007)**

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to changes in 7 CFR Parts 272 and 273, Department of Agriculture, Food and Nutrition Service, the agency will collect claims for trafficking, in addition to other types of overissuances. The agency also proposes to increase the amount of the household's monthly allotment reduction from \$10 to \$20 for intentional program violation. Revisions at §2009.A.4. reflect that the various programs under the Department of the Treasury which served as a means to

collection are now administered under the "Treasury Offset Program."

The agency has also taken this opportunity to reorganize regulations on the recovery of overissued food stamp benefits into one, more coherent subchapter: current language at §2005 was divided and moved to proposed §2007 and §2009 with all three sections under Subchapter P, current Subchapter R. becomes "reserved," and the regulation at current §2009 was moved to proposed §2005 which now include claims threshold information.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

**Subchapter P. Claims and Recovery of Overissued Food
Stamp Benefits**

§2005. Claims Against Households

A. All adult household members are jointly and severally liable for the value of any overissuance of benefits to the household. This is true regardless of whether the overissuance resulted from inadvertent error, an administrative error or an intentional program violation.

B. Action will not be taken to recover claims which are less than:

1. \$35 for inadvertent household error for participating households;
2. \$100 for administrative error for participating households; and
3. \$250 for non-participating households.

These thresholds do not apply to claims which are determined to be the result of intentional program violation or errors which are discovered in a quality control review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.B., 7 CFR 273.18.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:391 (April 1994), LR 20:780 (July 1994), LR 20:899 (August 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:189 (February 1995), LR 22:584 (July 1996), LR 23:83 (January 1997), LR 23:1710 (December 1997), LR 25:2326 (December 1998), LR 27:

§2007. Penalties

A. The Food Stamp Program shall maintain provisions relating to the disqualification penalties for intentional program violations. These provisions are aimed at deterring Food Stamp Program abuse and improving recovery of overpayments.

B. The basis for disqualification includes the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any state food stamp statute, and the use of food stamps in certain illegal purchases. The program will not increase the benefits to the household of a disqualified person because of the disqualification.

1. Mandatory disqualification periods of one year for the first offense, two years for the second offense, and permanently for the third offense will be imposed against any individual found to have committed an intentional program violation, regardless of whether the determination was arrived at administratively or through a court of law.

2. Individuals will be disqualified for two years for a first finding by a court that the individual used or received food stamps in a transaction involving the sale of a controlled substance, and permanently for a second such finding. Permanent disqualification will also result for the first finding by a court that an individual used or received food stamps in a transaction involving the sale of firearms, ammunition or explosives with food stamps.

3. An individual convicted of trafficking food stamp benefits of \$500 or more shall be permanently disqualified.

4. An individual shall be ineligible to participate for ten years if found to have made a fraudulent statement or representation with respect to identity or residence in order to receive multiple benefits simultaneously.

C. A loss of benefits penalty shall be imposed on those food stamp recipients who fail to report earned income in a timely manner. When determining the amount of benefits the household should have received, the Office of Family Support shall not apply the 20 percent earned income deduction to the income of the household which did not timely report. By doing this, the household that benefitted from the failure to timely report is penalized since the amount it has to repay in overissuance will be increased. This provision shall be applied to allotments issued for October 1996 and all allotments issued for subsequent months.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B, and FR 65:41752 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 3:738 (December 1987), LR 14:150 (March 1988), amended by the Department of Social Services, Office of Family Support, LR 23:84 (January 1997), LR 27:

§2009. Collection Methods

A. The agency is required to collect any overissuance as well as claims for trafficking. Collection of overissued benefits may be accomplished using various methods including, but not limited to, the following methods:

1. reducing future allotments unless a repayment schedule has been established. The amount by which the agency can reduce the household's monthly allotment in the collection of overissuances which are the result of intentional program violation is limited to 20 percent of the household's entitlement or \$20 per month, whichever is greater, and 10 percent of the allotment or \$10, whichever is greater, for all other overissuances;

2. return of benefits;
3. cash repayment;

4. referral of delinquent food stamp claims to the Department of the Treasury for collection through the Treasury Offset Program. The Treasury Offset Program is the withholding of federal income tax returns, federal salaries or other funds payable by the federal government which may include, but not be limited to, federal retirement payments, military retirement, contractor/vendor payments, Railroad Retirement and Social Security payments. The Financial Management Service of the Treasury Department will charge an administrative fee for all collection services, and this fee will be added to the claim and deducted with any federal offset; or

5. withholding of unemployment compensation benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B, and FR 65:41752 et seq..

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:768 (November 1986), amended by the Department of Social Services, Office of Family Support, LR 27:

Subchapter Q. Reserved

Subchapter R. Reserved

Interested persons may submit written comments on the proposed rule by January 25, 2001, to the following person: Vera W. Blakes, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on January 25, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Family Impact Statement

1. What effect will this rule have on the stability of the family? This rule should have no effect on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule should have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This rule would decrease the monthly food stamp allotment of a family/household found to have intentionally violated Food Stamp Program requirements.

5. What effect will this have on the behavior and personal responsibility of children? This rule should 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, the Food Stamp Program is strictly a state/federal function.

J. Renea Austin-Duffin
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Food Stamps C Certification of Eligible Households

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated implementation cost to state government is the cost of publishing the rule and printing revisions to policy. This cost is minimal and funds for such actions are included in the programs' annual budget. There are no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The impact on revenue resulting from the \$10 to \$20 increased allotment reduction cannot be projected. Trafficking claims are new and since no data is available, collections also cannot be projected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be an impact on a small number of Food Stamp recipients who were overissued benefits as a result of intentional program violation. The recipient's monthly allotment can be reduced by 20 per cent of the household's entitlement or \$20, whichever is greater. The agency cannot anticipate these cases, but currently affected households represent a very small number. (In most instances, the 20 per cent figure is used and this did not change.)

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
0012#070

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Wrap-Around Child Care Program
(LAC 67:III.Chapter 52)**

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, to add the Wrap-Around Child Care Program.

The purpose of this program is to provide very low income, working families with quality, full-day/full-year child care services. The need for full-time and part-time child care services for children of very low income, working parents is increasing. The agency's Child Care Assistance Program has reached its capacity and is unable to meet this growing area of need. In order to assure the care level of a major population of these children, the Office of Family Support, through certain contracted, Head Start Program grantees, has established the Wrap-Around Child Care Program which is funded through Louisiana's Temporary Assistance for Needy Families Block Grant. A second Emergency Rule has extended the original Emergency Rule which established the program effective June 1, 2000.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 52. Wrap-Around Child Care Program

§5201. Authority

A. The Wrap-Around Child Care Program is established effective June 1, 2000 and is administered under the authority of state and federal laws.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5202. Definitions

Head of Household The individual who may apply for Wrap-Around Child Care services for a child who customarily resides more than half the time with him/her, that is, the child's parent or the adult with primary responsibility for the child's care and financial support if the child's parent is not living in the home or is living in the home but under age 18 and not emancipated by law.

Household A group of individuals who live together consisting of the head of household, the spouse of the head of household, and all children under the age of 18, including the minor unmarried parent of any dependent children who need child care services (unless the minor unmarried parent has been emancipated by law).

Training and Employment Mandatory Participant Each household member who is required to be employed, or in a combination of employment and attendance at a job training or educational program, including the head of household, spouse of head of household, and the minor unmarried parent of a child who needs Wrap-Around Child Care services.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5203. Conditions of Eligibility

A. A household must meet all of the following eligibility criteria:

1. all children receiving services must reside with a parent or adult head of household;

2. any child receiving Wrap-Around Child Care Program services must not be receiving assistance from the Family Independence Temporary Assistance Program (FITAP) or the Child Care Assistance Program (CCAP) to ensure that Wrap-Around services are not considered assistance according to 45 CFR 260.31 and that there will be no duplication of services;

3. the head of household, that person's spouse, or non-legal spouse (if the parent of a child in the household), including any minor unmarried parent who is not legally emancipated and whose child(ren) are in need of Wrap-Around Child Care services, must be;

a. employed a minimum average of 20 hours per week and all countable work hours must be paid at least at the federal minimum hourly wage; or

b. engaged in a combination of employment, which is paid at least at the federal minimum hourly wage, and job training or an educational program, for a combined average of at least 20 hours per week;

4. each parent and/or adult household member must be working, or engaged in a combination of working and attending a job training or educational program, during the hours that child care is needed, that is, child care will only be provided during hours that parents and/or adult household members are actually at work, job training, an educational program, or commuting to, or from, these activities;

5. the household must include at least one child with a need for Wrap-Around Child Care services defined as full-day/full-year child care, that is, full-time (30 or more hours per week) or part-time (less than 30 hours per week) and holiday care provided in conjunction with part-time care during the school year, who is:

- a. under age 13; or
- b. age 13 through age 17, with a physical, mental, or emotional disability rendering him incapable of caring for himself, as verified by a physician or licensed psychologist;

6. the child needing care must customarily reside more than half of the time with the head of household who is applying for child care services, ensuring that only one household can receive child care service for that child;

7. the head of household or another adult household member must be responsible for the payment of child care costs for a child who lives in the household. A need for child care services does not exist if child care costs will be paid by a third party who is not a household member. However, this will not apply if a third party, not legally obligated to make child care payments, is temporarily doing so until payments begin; and

8. there must be a current need for child care at the time of application.

B. The household must qualify under the income guidelines set forth in §5205, based on the following income sources:

- 1. gross earnings from all sources of employment and the profit from self-employment; and
- 2. any unearned income, such as child support, alimony, retirement and disability benefits, Social Security, SSI, unemployment compensation benefits, adoption subsidy, or veteran's benefits, that is received by any household member.

C. A slot must be available with the selected Head Start grantee.

D. The child in need of care must be either a citizen or a qualified alien. Program policy on qualified aliens is the same as policy defined in LA C 67:III.1223.

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

- 1. proof of social security numbers for all household members;
- 2. birth or baptismal certificates for all children in need of care;
- 3. proof of all countable household income;
- 4. proof of the hours of all employment; and
- 5. proof of hours at a job training or educational program, as well as anticipated date of program completion.

F. Eligible cases may be assigned a certification period of up to 12 months.

G. The household is required to report any changes that could affect eligibility or payment amount within 10 days of the change. Failure to report a change that affects eligibility or payment amount may result in action to recover any ineligible payment.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5205. Income Limits

A. A household must have total countable income of no greater than 130 percent of the Federal poverty level. These amounts are updated annually.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5207. Rights and Responsibilities

A. The head of the household applying for, or receiving, Wrap-Around Child Care services shall have certain rights and responsibilities.

1. Information provided by the household will not be released without written consent, except to agencies and officials as allowed by law (LAC 67:III.101-103).

2. The household is entitled to receive timely, written notification of action taken on applications or reported changes in household circumstances.

3. The head of household is responsible for reporting the following within 10 days of the change:

- a. termination of employment or attendance at a job training or educational program;
- b. reduction to less than an average of 20 hours per week of employment or a combination of employment and job training or educational program;
- c. an eligible child moves out of the home;
- d. household composition;
- e. earned and unearned income; and
- f. number of days or hours that a child is in care.

4. Any applicant or recipient who has been denied services under the program may appeal the denial by filing a written request within 10 days of receipt of the written notice of denial. The request must contain a copy of the notice of denial and must state the reason(s) the applicant believes services were wrongfully denied. Notice of denial is deemed received on the seventh calendar day after it is mailed to the applicant or recipient with correct postage paid at the address listed on his most recent application.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5209. Head Start Grantees

A. The agency will provide services to eligible individuals through contracts with some Head Start Program grantees for a designated number of slots. Available slots will be filled on a first-come, first-served basis.

B. The contracted Head Start grantee will establish a child care program that consists of full-day/full-year child care, that is, full-time (30 or more hours per week) or part-time (less than 30 hours per week) and holiday care provided in conjunction with part-time care during the school year.

C. The center shall maintain the following child/staff ratios:

- 1. 4:1 up to age 12 months;
- 2. 6:1 from age 12 months to age 24 months;
- 3. 8:1 from age 24 months to age 36 months;
- 4. 10:1 from age 36 months to age 60 months;
- 5. 16:1 from age 5 years to age 12 years;
- 6. children with disabilities will have a child/staff

ratio sufficient to provide adequate care but under no circumstances shall the child/staff ratio exceed 16:1.

D. Each group/class shall consist of two staff members for the appropriate number of children. In mixed-age groups, the ratio and group size for the youngest child shall be used.

E. Each group/class shall be supervised by one teacher and one aide, or by two teachers. All teachers at each facility must have at least a CDA (Child Development Associate credential) for the appropriate age of children.

F. The grantee shall ensure that procedures are in place to prevent, identify, and report suspected abuse or neglect of children as required by Children's Code Articles 601-610 and 45 CFR 1301.31.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5211. Payment

A. The Head Start grantee will be paid a weekly rate of \$85 per week (\$17 per day) per child for full-day, full-time child care.

B. The Head Start grantee will be paid \$2.12 per hour per child for part-time care.

C. The Head Start grantee will be paid \$2.12 per hour for up to a maximum of eight hours per child (\$17 per day) for allowable holiday care provided in conjunction with part-time care during the school year.

D. Payment will not be made for a child who is absent from day care more than five days in a calendar month or for an extended closure by a provider of more than five consecutive days in a calendar month.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

Interested persons may submit written comments by January 25, 2001, to: Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA, 70804-9065. She is the responding authority to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on January 25, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Family Impact Statement

1. What effect will this rule have on the stability of the family? This rule will have a positive effect on families, as child care services will be available to more low income working families.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The availability of the program will expand the choices of some persons with regard to education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule should have a positive effect on the functioning of the family as it will make available more quality child care for low income working families or those families working and attending a job training or educational program.

4. What effect will this have on family earnings and family budget? This rule should have a positive effect on family earnings as the entire cost of child care is paid by the agency.

5. What effect will this have on the behavior and personal responsibility of children? Quality child care helps

children to be more socially and intellectually prepared and ready to learn. Studies show that high-quality child care may prevent children from committing crimes.

6. Is the family or local government able to perform the function as contained in this proposed rule? The function as contained in this proposed rule can only be performed by the Head Start Centers/grantees and the agency.

J. Renea Austin-Duffin
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Wrap-Around Child Care Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated cost to the state as a result of this rule is \$24,000,000 for FY 00/01, 01/02, and 02/03. The cost will provide various types of child care services to as many as 8,000 children and will be paid with 100% federal funds from the Temporary Assistance for Needy Families (TANF) Block Grant to Louisiana. Other costs include the cost of publishing the rule, related policy, and forms. These costs are minimal and included in the budget.

There are no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Head Start grantees will have increased costs in their expansion to provide full-time and part-time child care services. Wrap-Around Child Care payments are expected to compensate grantees for their increased costs to the extent that these TANF Block Grant funds continue to be available.

Households eligible for Wrap-Around Child Care will benefit in having their child care costs paid by the program. Head Start Centers will receive payments (income) for these children directly from the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program will increase the availability of quality child care services for working families whose incomes are at or below 130% of the federal poverty level. In addition, it will increase participation by the Head Start Centers and allow for year-round employment for employees with the many Head Start Centers.

Vera W. Blakes
Assistant Secretary
0012#072

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT Department of Treasury

Credit Card Acceptance by State Agencies
(LAC 71:I.Chapter 9)

In accordance with the applicable provisions of the Administrative Procedures Act, R.S. 49:950, et seq., notice is hereby given that the Department of the Treasury intends

to promulgate a rule entitled "Credit Card Acceptance by State Agencies," in accordance with R.S. 49:316.1.

Title 71
TREASURY
Part I. Treasurer

Chapter 9. Credit Card Acceptance by State Agencies

§901. Purpose

A. It is the intent of the state to accept payment of any obligation including, but not limited to, taxes, fees, charges, licenses, service fees or charges, fines, penalties, interest, sanctions, stamps, surcharges, assessments, obligations or any other similar charges by credit cards, debit cards or similar payment devices approved by the treasurer. The state recognizes the expanding role of electronic commerce ("e-commerce") in conducting business and the state is taking steps to become an active participant with the development of the "E-Mall", the state's one-stop shopping internet web site. Electronic payment methods, including credit cards, debit cards and similar devices is a vital link in "e-commerce". In order to incorporate these payment methods, Treasury must develop and promulgate guidelines in accordance with R.S. 49:316.1.

§903. Definitions

Payment Card—a valid credit or debit card or similar payment device which is designated by the treasurer as acceptable by any state entity to make payment for any state obligations.

Card Provider—the issuer of a credit card, debit card or similar device who has contracted with Treasury for acceptance of their payment card or a financial institution which has contracted with Treasury for processing of card payments.

Card Holder—the person a credit card, debit card or similar device has been issued or an authorized user of a payment card.

Obligation—taxes, fees, charges, licenses, service fees or charges, fines, penalties, interest, sanctions, stamps, surcharges, assessments, obligations and any other similar charges or obligations.

Provider billings—the manner in which the card providers will bill the state for the settled card payment transactions.

State Charge—a fee established by the treasurer in the form of a uniform dollar amount or percentage assessed for all types of cards or devices accepted by state entities.

Merchant Account Number—the account number assigned by the Card Provider to the state entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§905. Application for Credit Card or Similar Devices

A. The treasurer will negotiate and enter into contracts, with card provider(s) not to exceed five years, for acceptance of credit card, debit card and similar payment devices. The treasurer will seek to achieve uniform implementation and standard terms and provisions with

respect to the acceptance of payments by state entities. A state entity may recommend that the treasurer consider a specific credit or debit card for approval. Annually, the treasurer will publish on the treasurer's website a list of approved credit card, debit card or similar devices by which any state entity will be authorized to accept for payment of any obligation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§907. Acceptance of Cards by the State Entities

A. The state, through any department, agency, board or commission or other state entity, may accept payment of any obligation by credit card, debit card and similar payment devices approved by the Treasurer. Each entity will apply for participation by completing a merchant service agreement. The original completed application must be delivered to treasury. Treasury will review the application for correctness and forward the application to the card provider for processing.

B. The agency may not set a per order minimum and/or maximum dollar transaction amount that an agency may accept payment by a payment card in compliance with card service agreements. State entities shall not institute or adopt any practice that discriminates or provides unequal treatment for any payment card versus any other payment card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§909. Operating Procedures

A. Treasury will determine procedures that state entities must comply with to accept payment by payment card(s). These procedures, may be modified from time to time, to accommodate the state's accounting policies or treasury contract(s) for acceptance of payment card(s). Treasury will provide written procedures to participating state entities. These procedures will provide uniform implementation and standard terms and conditions for acceptance of payments by state entities. These procedures will determine:

1. the manner in which authorization is obtained by state agencies prior to making the card sales;
2. preparation of sales slips;
3. handling of card member refunds and credits;
4. settlement of transactions;
5. charge back rights;
6. card member disputes;
7. billing inquires;
8. retention of records; and
9. any other contract matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§911. State Charge

A. Treasury, from time to time, will negotiate with card providers for a fee for processing payment card transactions with state entities. Treasury will seek to achieve a reasonable fee that reflects the economies of scale achieved by negotiation for a statewide fee applicable to all state entities. The fee may be composed of a percentage and/or a specific dollar amount as determined by treasury and the card provider.

B. The state charge shall encompass these various fees charged by card providers and include other applicable fees including fees by third party processors, or fees assessed by providers of Internet payment processing services. The state charge shall be a uniform dollar amount and/or percentage designated by the treasurer for all card types. The state charge will be revised from time to time and the state treasurer shall notify state entities of the revised state charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§913. Fees

A. Each state entity shall assess a state charge for each payment transaction a payment card is accepted.

B. The state charge will be classified by the state entity into a fund designated by the treasurer. Each card issuer will provide to the treasurer and the entity a monthly billing detailing the amount of charges by merchant name and merchant account number. The entity will review the monthly billing and pay the invoice from the fund pursuant to an appropriation for this purpose by the legislature.

C. Each state entity will review the monthly billings and resolve discrepancies directly with the card provider(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

Interested parties may submit written comments to Gary K. Hall, Financial Officer, Department of the Treasury, P.O. Box 44154, Baton Rouge, LA 70804, or by facsimile to (225) 342-5008. All comments must be submitted by 4:30 p.m., February 26, 2001.

Ron Henson
First Assistant

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Credit Card Acceptance
by State Agencies**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no direct implementation costs or savings to state or local governmental units to implement this proposed rule that currently accept payment by credit card. As additional state agencies begin accepting payment by credit card there is an implementation cost to obtain a card swipe machine(s) (electronic data capture equipment). Under the central banking services agreement with Treasury, a swipe machine can be either purchased at a cost of \$600 per swipe machine or rented at \$30 per month.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Currently, credit card provider discount fees are paid from state agency revenue collections; thus, state agencies which accept credit cards for payment realize a net revenue for the goods sold or services provided. The adoption of this proposed rule will allow each agency to collect the discount fee at the time of sale from the credit card holder as a "state charge." The projected increase in revenue collections for the state is \$125,000 annually. This collection will increase in proportion to the increase in state agency acceptance of credit cards as a payment method.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

State agency acceptance of payment by credit/debit cards is a tremendous customer convenience. The discount fees associated with payment by credit/debit cards is a cost to the customers for this convenience. Currently, the discount rate for acceptance for Mastercard and Visa processing is 2.45 percent for keyed transactions. The annual estimated cost is \$125,000 to persons and groups who pay with credit/debit cards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment by the adoption of this proposed rule.

Gary K. Hall
Financial Officer
0012#035

H. Gordon Monk
Staff Director
Legislative Fiscal Office