

Rules

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Hazardous WasteC RCRA X Package
(LAC 33:V.3011 and 3025)(HW076*)

Editor's Note: The following portion of HW076*, which was published on pages 290-308 of the March 20, 2001 Louisiana Register, is being republished to correct a printing error.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental

QualityC Hazardous Waste

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3011. Standards to Control Particulate Matter

* * *

[See Prior Text in A - B]

C. Oxygen Correction

1. Measured pollutant levels must be corrected for the amount of oxygen in the stack gas according to the formula:

$$P_c = P_m \times 14 / (E - Y)$$

where:

P_c = corrected concentration of the pollutant in the stack gas

P_m = measured concentration of the pollutant in the stack gas

E = oxygen concentration on a dry basis in the combustion air fed to the device

Y = measured oxygen concentration on a dry basis in the stack.

2. For devices that feed normal combustion air, E will equal 21 percent. For devices that feed oxygen-enriched air for combustion (i.e., air with an oxygen concentration exceeding 21 percent), the value of E will be the concentration of oxygen in the enriched air.

3. Compliance with all emission standards provided by this Chapter must be based on correcting to seven percent oxygen using this procedure.

D. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under LAC 33:V.3005) will be regarded as compliance with this Section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this Section may be "information" justifying modification or revocation and re-issuance of a permit under LAC 33:V.323.

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 22:823 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:299 (March 2001), repromulgated LR 27:513 (April 2001).

§3025. Regulation of Residues

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not

excluded from the definition of a hazardous waste under LAC 33:V.105.D.2.d, h, and i unless the device and the owner or operator meet the following requirements:

* * *

[See Prior Text in A - B]

1. Comparison of Waste-Derived Residue with Normal Residue. The waste-derived residue must not contain LAC 33:V.4901.G.Table 6 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in 40 CFR 266, appendix VIII, as adopted at Appendix H of this Chapter, that may be generated as products of incomplete combustion. Sampling and analyses shall be in conformance with procedures prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in Appendix I of this Chapter.

* * *

[See Prior Text in B.1.a - B.2]

a. Nonmetal Constituents. The concentration of each nonmetal toxic constituent of concern (specified in Subsection B.1 of this Section) in the waste-derived residue must not exceed the health-based level specified in 40 CFR 266, appendix VII, as adopted and amended at Appendix G of this Chapter, or the level of detection (using analytical procedures prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110), whichever is higher. If a health-based limit for a constituent of concern is not listed in 40 CFR 266, appendix VII, as adopted and amended at Appendix G of this Chapter, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures contained in SW-846 or other appropriate methods), whichever is higher, shall be used. The levels specified in 40 CFR 266, appendix VII (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in 40 CFR 266, appendix VII.Note1, as adopted and amended at Appendix G of this Chapter) are administratively stayed under the condition, for those constituents specified in Subsection B.1 of this Section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in LAC 33:V.Chapter 22.Table 2 for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts, as defined by applicable agency guidance or

standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by LAC 33:V.Chapter 22.Table 2 for F039 nonwastewaters. In complying with the LAC 33:V.Chapter 22.Table 2 for F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans.

Note: The stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in LAC 33:V.Chapter 22.Table 2 for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the *Federal Register* or the *Louisiana Register*; and

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:826 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1107 (June 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:300 (March 2001), repromulgated LR 27:513 (April 2001).

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Assistant Secretary

0104#028

RULE

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 has adopted 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 Rule are to provide a mechanism to promote assessment, remediation, and re-use of contaminated properties.

Title 33

ENVIRONMENTAL QUALITY

Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation

Chapter 9. Voluntary Remediation

§901. Authority and Purpose

A. 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 27:514 (April 2001).

§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.

Recap—Louisiana Risk Evaluation/Corrective Action Program as presented in LAC 33:I.Chapter 13.

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 remediated. 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—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 27:514 (April 2001).

§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 27:515 (April 2001).

§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 or develops 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 27:515 (April 2001).

§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 27:516 (April 2001).

§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 requirements (ARARs) 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, a remedial design, and a remedial project plan;

3. The 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

4. the remedial design which 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 or attempted delivery 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 27:516 (April 2001).

§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. (This paragraph does not apply to conditions created prior to the participation of the applicant in the program.)

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 27:518 (April 2001).

§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 remedial 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 in 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. If such use restrictions are excessively lengthy and complex, the administrative authority may allow, on a site-specific basis, a notice of the use restrictions to be recorded in the parish records instead of the actual use restrictions. The form and content of the notice must be acceptable to the administrative authority.

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 27:518 (April 2001).

§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 Remediation 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 27:519 (April 2001).

§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.

D. For sites for which a notice of use restrictions has been placed into the parish record instead of the actual use restrictions, as provided in LAC 33:VI:915.C.3, the department shall maintain the use restrictions for as long as the use restrictions remain in effect for the site and for at least three years thereafter.

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 27:520 (April 2001).

James H. Brent, Ph.D.
Assistant Secretary

0104#026

RULE

**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 has amended the Underground Storage Tanks regulations, LAC 33:XI.103; 1121; and Chapter 12 (Log #UT007).

This 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 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 rule are to adhere to R.S. 30:2195.10.

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]

On Staff—performing services while employed by a response action contractor, for an average of twenty or more hours per week. On staff does not refer to an independent contractor, but to an employee of the response action contractor.

* * *

[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 27:520 (April 2001).

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—a 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 27:521 (April 2001).

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 27:522 (April 2001).

§1203. Prohibitions

A. Twelve months after promulgation of these regulations, April 20, 2002, 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 27:522 (April 2001).

§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 on staff, either a registered engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering and hydrogeology or a geologist with expertise in these fields. A copy of the current engineering registration or the college transcripts for the geologists must be provided;

5. the applicant must sign a certification statement certifying that the RAC will not accept an authorization for work from an eligible Tank Trust Fund participant if the RAC cannot begin work within 72 hours of authorization. The certification shall include a commitment that the RAC will retain documentation demonstrating compliance with this requirement; 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 27:523 (April 2001).

§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 27:523 (April 2001).

§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:XL.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 27:524 (April 2001).

James H. Brent, Ph.D.
Assistant Secretary

0104#027

RULE

**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, the Division of Administration has promulgated 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 27:524 (April 2001).

§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 "e-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 27:524 (April 2001).

§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 27:525 (April 2001).

§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 Ca 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 Ca 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 Ca 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 Ca 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 Ca person who issues a certificate.

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

Digital Signature Can 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 Ca 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 Csubscribers or Signers and Relying Parties.

Escrow Agent Ca 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 Cthe 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 Pair Ca 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 Government Ca parish, municipality, special district, or other political subdivision of this state, or a combination of two or more of those entities.

Message Ca digital representation of information.

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

PKI CPublic Key Infrastructure.

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

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

Private Key Cthe key of a key pair used to create a digital signature.

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

Public Key Cthe key of a key pair used to verify a digital signature.

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

Registrar Ca person that gathers evidence necessary to confirm the accuracy of information to be included in a subscriber's certificate.

Relying Party Ca 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 Key Ca key pair issued to a person to use when acting in a particular business or organizational capacity.

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

Signer—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 Agency—a 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.

Subscriber—a 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.

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

Written Electronic Communication—a 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 27:526 (April 2001).

§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 27:527 (April 2001).

§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 27:527 (April 2001).

§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 27:528 (April 2001).

Whitman J. Kling, Jr.
Deputy Undersecretary

0104#055

RULE

**Office of the Governor
Office of Women's Services**

**Family Violence Program
(LAC 4:VI.Chapter 17)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Governor's Office of Women's Services has repealed LAC 4:VII.1731-1735 Minimum Standards for Family Violence Programs, and amended new regulations entitled Governor's Office of Women's Services Quality Assurance Standards for Family Violence Programs.

The standards apply to all organizations community-based nonprofits that provide services for survivors of family violence and receive funds through the Governor's Office of Women's Services.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 17. Women's Services

Subchapter B. Family Violence Program Minimum Standards

§1720. Policy and Governance

A. Basic Considerations. These standards emphasize the role of the governing body in setting policy, identifying need, developing a strategy to address needs and evaluating the effectiveness and efficiency of the organization. The role of the governing body and the executive director are clearly differentiated; staff do not govern and the governing body does not administer the day-to-day activities. The governing body establishes policies and the staff, at the direction of the executive director, implements programs reflecting those policies. A clear governance structure is in place.

B. Standards

1. The purpose of the program is clearly stated and compatible with the philosophy of the OWS/LCADV.
2. The program functions in accordance with its stated purpose.
3. The program has a designated governing authority.
4. The governing authority is accountable for the program. It ensures the program's compliance with the charter and with relevant federal, state and local laws and regulations.

5. Members of the governing authority and any advisory body to the governing authority are chosen in a manner that assures a broad base of knowledge and participation in the governance of the program. There is a rotation mechanism to ensure a balance of new members and seasoned members.

6. The governing authority and any advisory body operate in accordance with acceptable practice.

a. The governing authority designates a person to act as executive director and delegates sufficient authority to this person to manage the program. An annual performance evaluation is conducted by the governing authority.

7. The governing authority establishes policies for the efficient and effective operation of the program.

8. The program takes a leadership role in identifying and addressing needs of family violence survivors and their children.

9. The program sets goals and objectives for its management; service delivery; and systems change functions, developing plans to achieve them.

10. The program evaluates the effectiveness and efficiency of its management, service delivery and systems change functions.

11. The program has documentation of its authority to operate under state law. There will be either a charter, partnership agreement, constitution, articles of association, or by-laws.

12. The program has documents identifying the governing body's addresses; their terms of membership; officers; and officers' terms.

13. The program has written minutes of formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

14. The program informs designated representatives of the Office of Women's Services prior to initiating any substantial changes in the program, services or physical plant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:528 (April 2001).

§1721. Contract Requirements

A. Basic Considerations. These standards emphasize legal and contractual issues which the program is required to meet and are identified in the contract. These standards are not inclusive of all the requirements under the contract. It should be noted that the contract contains an over-arching provision which specifies that compliance with the OWS quality assurance standards is required.

B. Standards

1. The program is legally authorized to contract.

2. The program provides services required in the contract. These services include but are not limited to emergency shelter or referrals, 24-hour hot line; crisis, advocacy, support and group counseling; and support services.

3. The program services comply with the OWS program philosophy.

4. The program does not accept reimbursement from clients unless their grant specifically authorizes them to do so.

5. The program submits accurate and timely reports and budget revisions in the required manner.

6. The program retains books, records or other documents relevant to their contract for five years after final payment.

7. The program obtains an annual audit within six months of ending of fiscal year and submits same to OWS.

8. The program agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Act of 1972; and the contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

9. The program acknowledges OWS as a funding agent on its program stationery, written material and when providing information about the program.

10. The program informs applicants or recipients of service of their right to a fair hearing in the event of denial, reduction, or termination of a service or the program's failure to act upon a request for service within a reasonable period of time.

11. The program restricts the use or disclosure of information concerning services, applicants or recipients obtained in connection with the performance of the contract to purposes which provide a benefit to survivors. The survivor is informed of any request for information and signs a voluntary consent before the information is made available.

12. The program does not use funds as direct payment to survivors or dependents.

13. The program imposes no income eligibility standards on individuals receiving assistance.

14. The program has procedures in place to insure confidentiality of records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:529 (April 2001).

§1722. Social Change

A. Basic Considerations. These standards address the program's education and advocacy efforts to ensure that survivors, their children, and those at risk of family violence, are protected and treated compassionately. The overall goal is to create an effective response system in the community and to change cultural attitudes and institutional practices that perpetuate violence. It is important to remember, however, that standards can only address the issues for which the organization can be accountable. The program cannot be held accountable for whether a social change occurs. The program can be held accountable for their efforts to educate and advocate in the hope that change will result.

B. Standards

1. The program identifies those systems and organizations throughout its service area which affect the prevention and treatment of family violence.

2. The program evaluates the practices of those systems and organizations to determine which are harmful or ineffective.

3. The program prioritizes the community systems, organizations and institutions which need to be impacted first and develops a plan which defines strategies to change harmful or ineffective practices, reinforce helpful practices,

and intervene where there are no established practices or policies. The plan is adopted by the board on an annual basis and is updated as necessary. The plan could be developed in collaboration with a local coordinating council or task force.

4. The program conducts public education sessions targeted to personnel employed by community systems organizations.

5. The program works collaboratively with those community systems used by family violence survivors which may include establishing safe and independent lives. The goal is to change institutional practices that place survivors at risk.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:529 (April 2001).

§1723. Foundational

A. Basic Considerations. These standards address the issues and concerns which apply across all areas of the organization and program implementation. They provide basic guidelines to assure the highest ethical standards with regard to behaviors of staff, volunteers (including Boards of Directors and Advisory Boards), and the guarantee of confidentiality. These standards ensure that informed and skillful assistance is provided to family violence survivors in an empowering, non-victim blaming way, determining the extent of danger and proper ways to prepare for future safety.

B. Standards

1. Ethics

a. Family violence programs abide by an accepted code of ethics that ensures excellence in service delivery and professionalism among family violence advocates when working with survivors and representing the program.

b. Programs are equal opportunity employers. No person is discriminated against seeking employment, or while employed, on the basis of age, sex, race, color, disability, national origin, religion, veteran status, marital status, sexual orientation, abuse status (i.e. battered or formerly battered), or parenthood.

c. Program employees do not discriminate in the provision of services or use of volunteers on the basis of any status described above. No program discriminates or retaliates against any employee who exercises her/his rights under any Federal or State anti-discrimination law.

2. Confidentiality

a. Confidentiality of Facilities

i. When it is the policy of a family violence program to keep the location of their shelter or other facilities confidential, the program employees and volunteers are prohibited from disclosing information regarding the location of those facilities except in the following specific cases:

(a). to medical, fire, police personnel or agencies, when their presence is necessary to preserve the health and safety of survivors, employees, or volunteers at the facility;

(b). to vendors and others with whom programs have business relationships on a need-to-know basis. The executive director or designee ensures that written agreements are executed by representatives of such businesses pledging to keep the location of the facility confidential;

(c). to any other person when necessary to maintain the safety and health standards in the facility. The executive director or designee may disclose the location of the confidential facility for the purpose of official fire inspections, health department inspections, and other inspections and maintenance activities necessary to assure safe operation of the facility;

(d). to supportive individuals of a shelter resident who have been approved as a part of case management, who have been prescreened by staff, and who have signed an agreement to keep the address and location of the facility confidential. Staff ensures that the individual's presence at the facility does not violate the confidentiality of other shelter residents at the facility;

(e). confidential, written records of services provided by staff members, and/or volunteers are maintained. These records indicate the types of services provided; the individual or family to whom services were provided; the dates of service provision, the content and outcome of the interaction(s); the staff and/or volunteer providing the service(s); and provisions for future or on-going services.

b. Confidentiality of Survivor Information

i. Information received by family violence programs about survivors is confidential. Records on survivors are kept in locked files to assure confidentiality. Employees and volunteers are prohibited from disclosing survivor information except in very limited circumstances. Employees and volunteers are prohibited from releasing information about survivors to other employees and volunteers of the same family violence program except in the event of a specific need-to-know. A staff member or volunteer is considered to have a need to know when their work relates directly to the survivor for whom information is available.

ii. Confidential information may be released after a survivor signs a statement authorizing the release. The survivor should be informed about:

(a). to whom the information will be released (name of person or agency);

(b). a date by which the information will be forwarded to the person or entity to whom it will be released;

(c). the purpose for which this information is being released to this person or entity,

(d). the specific information that will be released; and

(e). the right to withdraw permission at any time.

iii. Staff and volunteers report information about any suspected abuse or neglect of a child or dependent adult according to the Louisiana Child & Adult Protection statutes.

(a). Regardless of a person's status as a family violence survivor, staff and volunteers are required to report suspected abuse of a child or dependent adult.

(b). After the filing of a program initiated abuse report, family violence staff must cooperate with the Child or Adult Protective Services regarding the investigation of the abuse report. This includes assisting the protective services staff in gaining access to the survivor and child(ren) in a manner that maintains the confidentiality of the non-reported survivor receiving services from the family

violence program. This, however, does not compel the following:

(i). violating the confidentiality of survivor/children who are not named in the abuse report as a victim or perpetrator of the abuse reported;

(ii). releasing information not directly relevant to the reported abuse.

c. Medical Emergency

i. Program staff and volunteers can release confidential information about a survivor during a medical emergency.

(a). Released information is relevant to the preservation of the health of an adult survivor or such a survivor's minor child in the event the survivor is not able to authorize the release or the survivor cannot be found in a timely manner.

(b). Released information is limited to the medical emergency.

(c). Released information is limited to the medical personnel or institution treating the adult survivor or minor child.

d. Fire Emergency

i. Where a fire exists, information that would otherwise be confidential may be disclosed to fire fighting personnel if such disclosure is necessary to preserve the health and safety of survivors, employees, or volunteers of the family violence program.

(a). Released information is limited to the fire emergency.

(b). Released information is limited to emergency fire and safety personnel treating the adult survivor or minor child.

e. Threats of Harm

i. Any form of firearm or weapon in the facility is prohibited even when locked in a locker at the facility. Program staff will include in their assessment for services appropriate questions to identify those survivors who possess firearms or other weapons and assist them in making arrangements for someone else to keep them while they are receiving services.

ii. Should a survivor pose a risk of harm to self or others, this information can be reported to an appropriate agency/individual. Program personnel will competently assess whether this disclosure is appropriate and necessary. Disclosure of this otherwise confidential information can be made to:

(a). licensed medical or mental health personnel or facilities, law enforcement personnel;

(b). identified, intended victim(s);

(c). the parent(s) of minor children making the threat.

Information released must be limited to that which is directly pertinent to the threatening situation.

f. Violence, Threatened Violence, or Other Crime by Survivor

i. In the event a survivor engages in or threatens to commit a violent act or other crime on the premises of a family violence program facility, such may be reported to law enforcement personnel. Program personnel will competently assess the circumstances and will disclose information only if deemed appropriate and necessary. Released information must be pertinent to the threatening situation.

g. Search and Arrest Warrants Meeting Specific Criteria

i. Family violence program employees and volunteers release otherwise confidential information in specific circumstances:

(a). when law enforcement personnel present a criminal arrest warrant which names the individual and alleges that the individual is located at the program, or its street address;

(b). when law enforcement present a search warrant that specifies the individual or the object of the search and alleges that the individual or object of the search is located at the program, or its street address.

h. Subpoenas

i. The executive director or designee of each family violence program is the only person authorized to respond to subpoenas for the program, employee, former employee, or volunteer. Should a process server present him/herself at the family violence program, he/she is directed to the administrative offices where the executive director or designee may be found. Identity of the shelter location cannot be confirmed to the process server.

ii. Regardless of what type of subpoena and regardless of whether the subpoena is for an appearance for a deposition or for an appearance at court, the executive director or her designee should advise whoever issued the subpoena of the provisions of the R.S. 46:2124.1 which is the privileged communications and records statute for family violence programs.

iii. If a survivor who is residing in the shelter has not given written permission for the program staff or volunteers to acknowledge that she is in fact a resident of that shelter, the person shall advise the process server that the identity of shelter residents is confidential but that in an effort to be of assistance that they:

(a). obtain the name of the person to whom the document is directed;

(b). document the type of subpoena being served, i.e., subpoena for deposition, subpoena duces tecum, subpoena to appear at a court hearing, etc;

(c). obtain the name and telephone number of person requesting the subpoena (attorney, judge);

(d). obtain the date, time, and where to appear;

(e). obtain the name and telephone number of process server; and

(f). refer above information to the survivor (if known) or to the executive director or her designee or other appropriate person as dictated by policy of program.

i. Civil Child Custody Orders, Custody Papers, "Child Pick-up" Orders, Service of Process and Other Law Enforcement Documents.

i. These documents do not in and of themselves present grounds for violation of survivor confidentiality. As described above, any such order or document must be accompanied by a criminal arrest warrant or a search warrant designating the program as the location to be searched and a description of who or what the search is authorized to produce. The executive director or designee is the only person authorized to respond to civil child custody orders, custody papers, "child pick-up" orders, service of process and other law enforcement documents.

j. Involuntary Commitment Orders

i. The statutorily protected privilege of confidentiality belongs to survivors, who have a right to know if legal documents have been issued that are addressed to or about them. Staff does not reveal that a survivor is in shelter or otherwise receiving program services. In the event of the attempted enforcement of a civil involuntary commitment order, staff, while maintaining privilege, makes every attempt to identify the name of the person trying to serve the order and any other relevant information. Staff then notifies the named survivor(s), when possible, of the order and the additional information.

k. Confidentiality Regarding Deceased Persons.

i. Family violence programs maintain confidentiality of records after the person is deceased. Records of the deceased person belong to the family violence program and programs are under no legal obligation to release them. Further, programs have no legal authority to release records unless ordered by a judge or if the deceased person has signed a release prior to her death. If, however, breaching confidentiality would assist in the prosecution of the perpetrator of violence, the executive director or a designee shall seek the counsel of an attorney prior to releasing information.

l. Confidentiality of Minors.

i. Except for the reporting of suspected child abuse and neglect or when a child is assessed to be of danger to her/himself or others, program staff is under no legal obligation to violate the confidence of a child.

m. Religious Activities.

i. Organized religious activities by an outside group or individual or staff within a shelter or non residential domestic violence program are prohibited. Survivor-directed initiatives for religious activities shall not be prohibited but must not take place in common, community shelter or program areas. However, staff who work directly with survivors are encouraged to be aware of the survivor as a whole person. Such staff will include the survivor's spiritual as well as physical, mental and emotional well being as a necessary part of their work with the survivor.

Survivors are not prohibited from considering their rabbi, priest, pastor, shaman, or any other member of an organized religion, as an ally who may visit the survivor under the same guidelines as any other ally.

3. Safety Planning

a. Family violence programs provide 24 hour per day staff to assist survivors of family violence with determining levels of danger/lethality and assist them to develop a personalized plan for safety.

b. Safety planning includes a danger/lethality assessment to determine the survivor's immediate level of danger, completed by trained advocates and documented in case notes or on a standardized form developed for the purpose of danger assessment.

c. Interim assessments are made during the shelter stay or nonresidential service.

d. Assessments screen for stalking and contain planning alternatives for stalking.

e. Safety planning meets the needs of the caller, i.e. a survivor wanting to leave, a survivor intending to stay, survivor with children and pets.

f. Safety planning is a continued process during a shelter stay or advocacy participation, especially at periods

of increased risks, i.e. filing of court documents, court hearings, or any strategic move by the survivor or perpetrator.

g. Safety plans are survivor-directed, and staff facilitated/guided.

h. Safety plans are produced in a manner that allows for customization for individuals' specialized needs.

i. Safety planning contains emergency response protocols for use during in-progress emergency and in anticipation of an impending emergency. Minimum steps to assist survivors in determining existing options are provided to plan for the following:

- i. getting help or getting away;
- ii. accessing transportation;
- iii. accessing a linkage to outside helpers;
- iv. protocols for the safety of children and pets;
- v. securing belongings;
- vi. determining a safe, alternative escape location;
- vii. getting assistance from the family violence program.

j. Documentation of safety planning includes but is not limited to:

- i. a logged note indicating that safety planning was offered during hotline calls;
- ii. case notes or a standardized form indicating safety planning was offered during initial residential and outreach intake services;
- iii. case notes or a standardized form indicating safety planning was offered on a regular basis and especially during changes in a survivor's plans or in event of a significant occurrence affecting the survivor, survivor's children or the batterer. Examples: the survivor's court appearances, resumption of or beginning new job, an order for visitation of children by the batterer, a batterer being served stay away orders or being released from jail after an arrest involving the survivor and/or children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:530 (April 2001).

§1724. Program Administration and Service Delivery

A. Basic Considerations. These standards encompass the overall practices and procedures that the program needs to ensure that survivors receive the services they are eligible for, interested in and in need of. Also, that those services are delivered in a manner which is survivor centered, non-judgmental, culturally sensitive and protects the dignity and right to self determination of the survivor. These standards include procedures for documentation of services, incident reporting, and grievance procedures addressing the relationship between philosophy and practice.

B. Standards.

1. General Administration

a. The executive director exercises full responsibility for the day-to-day management of the organization.

b. Staff is responsible for implementing policies.

c. The program maintains an internal structure for efficient and effective administration.

d. The service delivery plan fulfills the program's mission.

e. Services are survivor centered, non-judgmental, culturally sensitive and strive to empower persons served.

f. The organization measures the efficiency and effectiveness of its management function.

g. Programs are conducted in accord with applicable professional, ethical and legal principles.

h. Service statistics are maintained and used in accord with acceptable practices.

i. The program identifies the area and population it serves in its brochures and reports.

j. The program recognizes and respects the autonomy, dignity and rights of program participants.

k. Relevant goals, objectives and plans are established for service delivery management.

l. The program seeks to serve persons who need its services and works to eliminate barriers to the provision of quality service to those who seek service.

m. The program provides access to crisis information and shelter 24 hours a day.

n. The program conducts intake services in accordance with acceptable practices.

o. The program conducts orientation for persons to be served. Persons is defined to include adults and children.

p. The program has a system for case management. It regularly plans, monitors and assesses the progress of each person served.

q. The program designs communal living policies which stress non-violence, are fair and survivor centered. Policy enforcement balances the rights of survivors with the need to ensure safety for survivors who choose not to follow policy.

r. The program works collaboratively with other family violence programs throughout the state and in other states as appropriate to meet the safety and security needs of survivors.

2. Assessing for Appropriate Services.

a. Within initial contacts with survivors, staff assesses for the following:

i. eligibility for support and intervention services;

ii. immediate safety;

iii. batterer's potential for lethality;

iv. closely analyze batterer dynamics in same sex relationships to assure the person requesting services is the survivor, rather than the perpetrator;

v. special delivery needs based on a disability;

vi. special needs based on the requirements of a person's self-identified religious, cultural, ethnic, geographic or other affiliation(s);

vii. other appropriate services.

3. Appointments and Availability of Services

a. Intervention staff, whether shelter or nonresidential, is provided during times when most survivors need to access and receive services.

b. Survivors are informed of the process by which they may gain access, informally and by appointment, to advocates within the program in which they are receiving services.

c. At the time appointments are made, staff assists individual survivors in developing a safety plan, as necessary, for traveling to and from appointments.

4. Grievance Policy and Procedures

a. The program develops, and exercises the use of, when appropriate, a written grievance policy to be given to

every survivor upon admission to services. The procedures shall include, but not be limited to:

i. procedures to follow in the event a survivor believes they have been denied services;

ii. procedures to follow in the event a survivor is dissatisfied with the quality of services;

iii. procedures to follow in the event a survivor is dissatisfied with behaviors of a staff person.

5. Incident Reports

a. The organization provides a written policy to assure serious incidents are properly reconciled. Individual reports will be written for any injuries, accidents, unusual events or circumstances involving staff, volunteers, visitors, vendors, or survivors. Staff are informed regarding what would constitute each. Provisions are made for evaluation of severity of the incident and any follow-up actions needed.

6. Community Relations

a. The program is readily identifiable and visible among its potential users, peer organizations and appropriate publics. Public relations and public education materials are available in other languages for any ethnic group with a presence in the community and the geographic area served and for special needs populations.

b. Policies for community relations and fund development are comprehensive and practical.

c. Relevant goals objectives and plans are established for community relations and fund development

d. Community relations and fund development are conducted in accordance with applicable professional and ethical and legal principles.

e. The program uses designated personnel to implement its policies and procedures for community relations and financial development.

f. The program follows acceptable practices for public disclosure.

g. The program has accurate statistical data relevant to its services readily available.

h. The program conducts a public education program that raises the community's awareness of the causes, implications and the appropriate community response to family violence.

i. The program conducts a public relations program that projects an accurate positive image throughout its service area and raises the community's understanding of and support for its services.

j. The public education and public relations efforts reflect the program's philosophy and that philosophy is consistent with that of the OWS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:532 (April 2001).

§1725. Facility, Safety, Security and Health

A. Basic Considerations. These standards encompass the overall practices and procedures that the program employs to ensure that the facility and grounds that the program rents or owns are appropriately accessible, functional, attractive, safe and secure for the persons served, visitors, employees and volunteers. They ensure that the program meets legal requirements regarding access, safety and health as well as acceptable standards of cleanliness and functionality.

B. Standards

1. All facilities meet ADA standards.
2. Policies for the management of facilities are comprehensive and practical.
3. The program adheres to all applicable zoning, building, fire, health and safety codes and laws of the State and of the community in which the organization is located. Programs are annually monitored by the Office of Public Health and the State Fire Marshall.
4. Relevant goals, objectives and plans are established for building and grounds, safety and health.
5. The program uses designated personnel to implement its policies and procedures relative to facility, safety and health.
6. Comprehensive evaluations are conducted on a regular basis to measure the efficiency and effectiveness of the operations and maintenance of buildings and grounds, safety and health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:533 (April 2001).

§1726. Financial Management and Fund Development

A. Basic Considerations. These standards stress that Generally Accepted Accounting Practices (GAAP) with regular internal and external reports and audits, are the foundation for prudent management of capital, endowment and operating income and expenses. It is the role of the governing body to ensure financial accountability and that the bulk of the program's resources are used to meet service needs.

B. Standards

1. Policies for financial management are comprehensive and practical.
2. Relevant goals, objectives and plans are established for financial management and long term financial stability.
3. Financial management is conducted in accordance with applicable professional, ethical and legal principles. Generally accepted accounting procedures and practices are implemented as required by the terms of the contract.
4. The program uses or contracts with designated and appropriately qualified personnel to implement its policies and procedures for financial management.
5. The program provides bonding of staff responsible for financial resources. It is recommended that the program provide and maintain adequate liability coverage for the governing body.
6. The program prepares financial statements that clearly and fairly present the organization's financial position.
7. The governing body adopts and the executive director implements comprehensive budgets in accordance with acceptable practices.
8. The governing body continuously reviews and analyzes its financial position.
9. The governing body adopts and regularly reviews salary range schedules and adheres to minimum wage laws.
10. The program prudently manages its operating, endowment and capital funds.
11. The program has sufficient cash flow to meet its operating needs
12. The program maintains adequate cash reserves.

13. The program does not enter into any agreement, written or otherwise, where public funds are paid, or committed to be paid, for services or goods, to any member of the governing body, staff, or members of the immediate family of said governing body or staff, or to any entity in which the foregoing have any direct or indirect financial interest, or in which any of the foregoing serve as an officer or employee, unless the services or goods are provided at a competitive cost or under terms favorable to the program. The program maintains written disclosures of any and all financial transactions in which a member of the governing body, staff, or their immediate family is involved.

C. Fund Development

1. The program has a long and short range fund development plan.
2. The program conducts a fund development program which secures sufficient funds to cover its operating and capital needs.
3. The program builds and maintains adequate financial reserves.
4. The governing body initiates and actively supports fund development efforts.
5. The program comprehensively evaluates community relations and fund development programs to measure efficiency and effectiveness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:534 (April 2001).

§1727. Staff and Volunteer Management

A. Basic Considerations. These standards encourage strong professional values. They assume that written policies and consistent practice are the cornerstone of a quality human resource system.

B. Standards

1. Policies for the management of staff and volunteers are comprehensive and practical.
2. Relevant goals, objectives and plans are established for staff and volunteer administration.
3. The administration of staff and volunteers is in accordance with applicable professional, ethical and legal principles.
4. The program employs sufficient staff and delegates sufficient authority to ensure the responsibilities the program undertakes are adequately carried out.
5. Comprehensive performance evaluations are conducted to measure the efficiency and effectiveness of staff and volunteer administration.
6. The program promulgates personnel policies that attract and retain qualified personnel.
7. A comprehensive manual containing all personnel policies is maintained, kept current, and made available to all staff.
8. The personnel policies provide for hours, leave and benefits that are designed to attract and retain qualified staff.
9. The program establishes written qualifications for all positions and employs persons who meet or exceed those qualifications.
10. Acceptable practices are followed for recruiting, hiring and assigning staff. Responsibility for hiring is clearly defined.
11. A written employee grievance policy is provided.

12. Acceptable screening practices which serve to protect the program and its clientele are clearly defined and followed. Employers, staff, or others responsible for the actions of one or more persons who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children, with the permission of said person, will have a criminal history records check conducted. (R.S. 15:587.1)

13. The program recruits a diverse staff which is reflective of the community and geographic area in which the program is located.

14. Acceptable practices are followed for orientation, development and training of staff. Training content is compatible with OWS and LCADV's statement of philosophy. Forty hours of family-violence related training is required for staff. Sixteen hours of orientation for new staff is required plus 20 hours of training in the first year. Experienced staff accompany new employees at all times and they are not given sole responsibility for working with survivors until orientation is complete.

15. Acceptable practices are followed in supervising and evaluating staff. Clear times of supervision and reporting are established.

16. Acceptable practices are followed in terminating employment of staff. Responsibility for terminating employment is clearly defined

17. A job classification system and salary ranges are maintained to attract and retain qualified personnel.

18. Comprehensive and current job descriptions are available for all staff positions.

19. A comprehensive confidential personnel record is maintained for each staff member.

20. Staff providing direct services are provided opportunities for debriefing to prevent burnout in an ongoing forum, such as weekly staffing, maintenance or supervision meetings.

21. The program determines the need for volunteer services and utilizes the services of volunteers as appropriate.

22. The program adopts policies that attract and retain qualified volunteers.

23. A comprehensive volunteer manual containing all volunteer policies and practices is maintained, kept current and made available to volunteers. This manual includes policies and procedures regarding recruitment, screening, training, supervision and/or dismissal of volunteers used to provide both direct and non-direct services. The manual clarifies the roles and contributions of volunteers to the program's provision of service, with specific detail addressing how, when, where and the frequency with which volunteers will be used.

24. Comprehensive and current job descriptions are available for volunteer positions.

25. A comprehensive, confidential personnel record is maintained for each volunteer which includes, but is not limited to a signed confidentiality statement and a record of trainings completed by the volunteer.

26. The volunteer policies provide for hours, benefits and recognition that are designed to attract and retain qualified volunteers.

27. Acceptable practices are followed in recruiting, screening and assigning volunteers. Screening practices serve to protect the program and its clients.

28. Acceptable practices are followed in the orientation and training of volunteers. The organization must provide volunteers with 20 hours of training. Training content is compatible with OWS and LCADV's statements of philosophy.

29. Acceptable practices are followed in the supervision, evaluation and termination of the participation of volunteers.

30. Volunteers are qualified for their responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:534 (April 2001).

§1728. Eligibility

A. Basic Considerations. These standards assure equal provision of services to family violence survivors and their dependents.

B. Standards

1. Persons eligible for the services of family violence programs include, but are not limited to family violence survivors, their legal dependents, and those that are or have been in danger of being emotionally, physically or sexually abused and meet the following criteria;

a. adults, legally emancipated minors, or minors granted permission for services by a parent, guardian, judge's order or caretakers of eligible persons;

b. in the event of non-emancipated minors seeking services for themselves, programs shall acquire parental permission prior to providing applicable services;

c. those eligible under the above definition who are/have been abused, or who believe they are in imminent danger of being abused, by their current or former intimate partner;

d. those eligible above who have no safe place to go;

e. those eligible above who willingly agree to abide by program guidelines;

f. those with the ability to take primary care of themselves and their dependents within a communal living facility.

2. Programs provide services regardless of race, religion, color, national origin, gender, age (within above guidelines), mental or physical disability, sexual orientation, citizenship, immigration status, marital status or language spoken.

3. Programs provide services to male survivors who are eligible through collaboration with other organizations.

4. No minor dependent males or females with their parent or guardian are denied access to services on site. Survivors and their dependents may become ineligible if there is evidence that supports a history of violence and the refusal to follow safety guidelines either for themselves or others to cause the environment to become unsafe. Programs may apply to OWS for exemptions because of facility restrictions. Limited exemptions may be given on a case by case basis on presentation of a workable plan.

C. Special Needs and Circumstances

1. Alcohol or drug abuse and addictions: Family violence programs do not withhold services to persons using alcohol or drugs, off the program property, solely based upon the use of the alcohol or substance. Programs provide a written policy demonstrating how repetitive substance/alcohol use, or the demonstration of behaviors incongruent with community living, may affect continued stay in a facility or the limitations of other services available.

2. In cases where survivors require assisted living, eligibility is not withheld, but services made available through coordinated efforts between family violence program staff and other identified service providers.

D. Length of Stay (Emergency Shelter/Safe Home)

1. Programs offer safe shelter for a minimum of six weeks. Survivors are informed of the minimum length of stay and any criteria which may impact or shorten this stay.

2. Extensions of length of stay are contingent upon the survivor's progress toward meeting self-identified goals.

3. Reasons for denial of extensions requested by a survivor are documented in the case file and shared with the survivor in sufficient time for her to make other safe arrangements if necessary.

E. Repetitive Admissions

1. No program shall place a limit on the number of admissions to shelter without the presence of at least one of the ineligibility criteria.

F. Ineligibility

1. In some instances, applicants and current survivors may be denied services. Programs inform survivors seeking residential services of these instances as soon as possible in order for them to make a more enlightened decision about choosing to come to shelter, instead of waiting until intake when they have already risked leaving their abuser.

G. Criteria

1. The extent to which these criteria affect the long-term or future eligibility for services must be evaluated and documented on a case-by-case basis.

a. Not an adult or emancipated minor, or granted permission.

b. Active suicidal or homicidal behaviors.

c. Previously been disqualified from services.

2. In the event the program cannot admit new survivors due to capacity, every effort is made to secure and facilitate admission to safe alternate accommodations. This placement may include, but not be limited to hotel/motels, safe homes, LCADV/OWS sister shelters, homeless shelters, or other facilities which can be safely and confidentially provided.

3. If, prior to admission, a person is determined ineligible for shelter services, information and referrals are made for other appropriate services.

4. If, after admission, a person is determined to be ineligible for services, program staff:

a. refers the person(s) to appropriate services elsewhere;

b. assists the person(s) with accessing transportation, if possible, to receive the services.

5. Programs maintain written protocols outlining the location(s) and methods by which shelter, advocacy/counseling, and other services are delivered to eligible adult and minor male survivors needing services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:535 (April 2001).

§1729. Residential Services

A. Basic Considerations. These standards assure family violence programs provide appropriate and quality services to survivors of family violence and their children in an empowering, non-blaming way.

B. Standards

1. General

a. Family violence shelters provide access, admittance and residence in temporary shelter for survivors of family violence and their children 24 hours a day, every day of the year.

b. Shift coverage provides on-site staff coverage 24 hours a day, 7 days a week when a survivor is in residence at the shelter and/or when the hotline is answered at the shelter facility.

c. Regardless of the shift requirements, the first priority of the staff is to be responsive and accessible to a resident or hotline caller.

d. A family violence program provides a back up system for use during emergencies. A supervisor or designee is available "on call" by way of pager or in some manner of contact that allows for immediate response. Each program establishes a protocol that defines criteria and steps for using the back-up system.

e. Family violence programs provide a record of individual and group supervision for shelter employees. Supervision is implemented no less than monthly for part-time employees (20 or less in a week) and biweekly for full-time employees. Documentation of supervision for volunteers is recorded and implemented as if they were part time employees.

f. Documentation of staff/volunteer supervision reflects the fact that the supervision took place and a listing of general subject(s) covered in the session is in the personnel or volunteer's file. In the event of problems related to staff performance, documentation is performed according to the program's personnel policies.

g. Procedures for adequate staff communication to provide continuity of service for survivors, including a regular review of any problem areas to resolve, will be developed and implemented.

2. Shelter Services

a. Every survivor is provided:

i. emergency shelter which is structurally safe and accommodates the particular security concerns of family violence survivors. The method of providing this security needs to be documented and this knowledge made available to survivors;

ii. confidentially of stay at shelter. This is documented in a form and signed by the survivor during intake;

iii. emergency food, clothing, and hygiene items free of charge to adult survivors and their children. When medical services are needed the program helps survivors access services.

b. Advocacy/intervention services, including safety planning for the shelter stay and travel outside the shelter, are available and offered 24 hours a day, every day of the

year, with trained advocates on site to provide face-to-face emergency services.

c. Family violence shelters ensure that staff members:

i. have immediate face-to-face contact with a new survivor admitted to shelter to help determine emergency needs, orient them to the shelter facility and procedures;

ii. conduct a formal face-to-face intake process with a new survivor upon admission to shelter and answer any questions the survivor may have. During this time the staff gives the survivor a copy of shelter guidelines and education material on family violence, being very sensitive to the survivor's ability to read and understand. The staff person doing the intake is trained on discipline guidelines for children in the shelter and how to assist the mother on following these guidelines through appropriate discipline techniques;

iii. sign a written agreement with each survivor about services to be provided by the shelter, which include but are not limited to:

- (a). program services, its staff and volunteers;
- (b). confidentiality agreements, including records;

(c). house guidelines, rights and privacy matters;

d. House guidelines are written in positive and respectful language, including those guidelines posted throughout the house. The purposes of the guideline is for protection, safety or health. Guidelines are limited to the most crucial of situations and reflect the intent to show that the shelter facility is the survivor's home. (OWS with the assistance of LCADV will review program guidelines and offer suggestions.) House guidelines include only those items under the following three categories:.

i. Safety

(a). around confidentiality issues (confidentiality of staff and survivors and program locations, etc.);

(b). around security issues (possession of weapons, locked doors, etc.); and

(c). around physical safety (threats or acts of violence including discipline of children, etc.)

ii. Group Living

(a). programs encourage cooperation between survivors in communal living;

(b). programs make every reasonable effort to keep a survivor eligible for services regardless of her ability or willingness to participate in daily upkeep of the shelter facility and to adhere to the health and safety guidelines.

iii. Respect for Self and Others. Demerit and warning systems are not used.

iv. Survivors constitutional right to privacy in their person, property, communications, papers and effects is respected at all times by programs. Survivors are not under any circumstances subjected to unwarranted or unreasonable searches conducted by shelter staff of the survivors person, room, or property. However, circumstances may arise at a shelter where some sort of search may be necessary to protect the health or safety of other survivors or staff.

e. All survivors residing in the shelter for more than 72 hours are provided with an individualized service plan. The survivor plan reflects assistance to survivor's needs.

Programs design service plans to facilitate revision in the event circumstances change. This plan includes

i. release of information agreements;

ii. an individual or family plan of self-defined goals and actions to address needed services to maintain safety and create self-sufficiency;

iii. list of guidelines for children in the shelter;

iv. length of stay polices.

f. A protocol is developed by each program for safe travel of all survivors. All protocols contain a provision for survivor travel to the shelter for intake. Further, the protocol reflects survivors need for local travel whether provided by themselves, the program or public/private carriers.

3. Discharge of Survivors

a. Family violence shelters establish a length of stay policy that is flexible and that balances the needs of survivors and the program's ability to meet those needs. Length of stay policy cannot be shorter than six weeks.

b. Shelters document the attempt to provide an exit interview with each survivor prior to their departure. Minimum categories of exit interview include, but are not limited to, an assessment of program services, treatment by staff (respectful, helpful, available), knowledge of staff in the areas of dynamics of family violence, children's services, safety planning, and goal planning. This is to be completed by survivor through use of a survivor friendly survey. The exit interview provides for a revision of the survivor's safety plan (inclusive of children's safety issues) and linkage to outreach and/or follow up services provided by the program and other community resources. These items are listed in detail on an exit interview form. The exit interview survey and form must be approved by OWS and LCADV.

c. Involuntary Discharge. Shelters must make every effort to work with a survivor in order for them to remain in shelter, except for situations which compromise the safety of others such as:

i. the use of violence or threats of violence;

ii. the use of behavior that repeatedly disrupts the ability of other survivors/children to receive safe and effective services;

iii. possession of illegal substances;

iv. possession of firearms, stun-guns, knives or any other weapon that may be used or by accident to threaten a life;

v. active suicidal or homicidal behaviors;

vi. violating the confidentiality of another resident.

d. An individual service plan/contract is developed with the survivor and appropriate documentation placed in the survivor's file which demonstrates attempts to assist the survivor and/or her children with problematic/disruptive behaviors.

i. Example A. A survivor is drinking alcohol and returning to the shelter intoxicated. Once sobriety is established, the program staff addresses this problem with the survivor and offer to develop a contract or service plan regarding this situation, such as requiring the survivor to attend AA meetings and assisting the survivor to those meetings. If the contract is not followed or the situation reoccurs, then steps to find other resources for the survivor are offered. If this is not accepted, the survivor may be asked

to leave. The contract and service plan are documented in survivor's file to reflect the process of offering assistance.

ii. Example B. A survivor's child's behavior is repeatedly disruptive or destructive. A worker addresses this problem with the survivor/parent and offers suggestions to remedy this by developing a plan which may include alternate resources such as a parental support group or referrals to other appropriate child service providers in the community.

e. Survivors may be asked to leave under the following circumstances:

- i. credible threats to others, with intent to harm;
- ii. unresolved disruptive or abusive behavior; or
- iii. if the safety of the shelter is compromised by their continued presence.

4. Re-entry

a. Shelters do not discriminate against a survivor by limiting the number of times of re-entry or by requiring a time limit between re-entry. Programs do not maintain a "no re-admit" list; however, it is permissible to "not admit at this time" if a survivor is not currently appropriate. This information is documented in survivor's file. Reentry status reflects the survivor's need and behaviors at the current time and is not based on past situations.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:536 (April 2001).

§1730. Intervention Services

A. Basic Considerations. These standards assure quality intervention services provided within family violence programs.

B. Standards

1. General

a. The first priority of the staff is immediate response and accessibility for a hotline caller.

b. A family violence program provides a back up system for use during emergencies. A supervisor or designee is available "on call" by way of pager or in some manner of contact that allows for immediate response. Each program establishes a protocol that defines criteria and steps for using the back-up system.

c. Family violence programs keep a record of individual and group supervision for shelter employees. Supervision is implemented no less than monthly for part-time employees (20 or less in a week) and biweekly for full-time employees. Documentation of supervision for volunteers is recorded and implemented as if they were part time employees.

d. Documentation of staff/volunteer supervision reflects the fact that the supervision took place and a listing of general subject(s) covered in the session in the personnel or volunteer's file. In the event of problems related to staff performance, documentation is performed according to the program's personnel policies.

e. A protocol is developed by each program for safe travel of survivors. Protocols contain a provision for survivor travel to the shelter for intake. Further, the protocol reflects survivors need for local travel whether provided by themselves, the program or public/private carriers.

f. Programs document the attempt to provide an exit interview with each survivor prior to their departure. Minimum categories of exit interview include, but are not

limited to, an assessment of programs, services, treatment by staff (respectful, helpful, available), knowledge of staff in the areas of dynamics of family violence, children's services, safety planning, and goal planning. This is completed by the survivor through use of a survivor friendly survey. The exit interview provides for a revision of the survivor's safety plan (inclusive of children's safety issues) and linkage to outreach and/or follow up services provided by the family violence program and other community resources. These items are listed in detail on an exit interview form. The exit interview survey and form is approved by OWS and LCADV.

g. Advocacy, case management and counseling services of family violence programs are empowerment-based and survivor directed. Empowerment-based intervention refers to survivor-directed interventions or services in which the survivor or recipient of services receives the support and assistance of trained staff who provide safety planning, assistance with meeting physical and emotional needs, education regarding the dynamics of domestic violence and living skills based on a case by case assessment. Empowerment also means allowing the survivor to make her own life choices within the basic eligibility guidelines of the program without coercion or threat of loss of services provided by the program.

h. Participation in intervention services shall be voluntary.

i. Methodology

i. Intervention services are provided in a manner best suited for individual survivors.

ii. The methods selected is provided only with approval of survivors.

iii. Family violence shelters/nonresidential services and outreach services include individual and group intervention services.

iv. Sessions are provided, as appropriate, to individual survivors.

v. Shelter residents are notified in writing that they have at least one hour per day, five days per week of individual sessions available to them at their request. Such sessions are provided by staff trained in techniques of individual, one-on-one intervention and focus on issues of safety planning for the survivor and dependents, physical and emotional needs assessment, planning for meeting those needs, education on the dynamics of family violence and knowledge of community resources with phone numbers provided and available for survivors and children.

vi. Group sessions for survivors and their dependents (separately) are provided, as appropriate, no less than once a week.

vii. Shelters provide developmentally appropriate, multi-age play groups for children on a daily basis during the week. Child care is provided during the parent's initial intake and individual and group sessions if play groups are not available during that time.

j. Restricted Methods

i. Couples counseling, in any form, is not provided by family violence programs.

ii. Family counseling that includes the presence of an alleged batterer is not provided by a family violence program.

iii. Mediation services are not provided or accommodated by family violence programs.

iv. Batterer Intervention Services are not allowed to take place on or near the premises of the family violence program. Furthermore, individual staff is not allowed to work with both survivors and batterers. Job descriptions for individual family violence program staff working with survivors and their dependents do not include work with the abusers. No staff whose responsibility it is to provide direct services to survivors, or to supervise or direct programs for survivors, is allowed to participate in or lead batterer intervention program services. These two programs remain entirely separate so that it is apparent to survivors that there is no conflict of interest within the program or staff. This does not, however, preclude staff from overseeing, for the purposes of holding accountable, batterer intervention program services.

k. Types of Intervention Services

i. Advocacy is defined as the performance of direct intervention in behalf of and with the permission of survivors, to further goals and objectives initiated by the survivor.

(a). Advocacy contacts addressed to individuals or groups not directly employed by the family violence program are not initiated without the survivor's direct permission. Proof of permission is provided by program staff by the recording of such on an approved Release of Confidential Information Form.

(b). Advocates provide only information necessary to achieve the goal of each individual advocacy contact.

ii. Counseling is defined as any individual or group interaction facilitated by program staff for the purpose of addressing emotional needs of adult or child users of services:

- (a). crisis counseling;
- (b). peer counseling;
- (c). supportive counseling;
- (d). educational counseling.

iii. Case Management is defined as any individual or group interaction facilitated by program staff for the purpose of assisting survivors with assessing needs, setting priorities, goal setting, implementing objectives, locating resources, or performing any activities pertaining to the accomplishment of goals. Case management is based upon survivor-identified goals and not a standardized or 'cookie cutter' formula. Case management shall reflect, at least the following:

- (a). identify and prioritize survivor's needs, including safety planning;
- (b). identify resources available to survivors;
- (c). develop goals and objectives specific to the survivors' own goals and record these in a program-approved service plan;
- (d). staff internal and external referrals to assist in goal/objective achievement;
- (e). correlation with survivor's length of stay, if in a shelter;
- (f). progression toward completion of survivor's goals and objectives;
- (g). adaptation to survivor's changing needs, as appropriate.

l. Provision of Services

i. Each survivor in a shelter will be assigned a resident-advocate/counselor. This staff person is available to meet with the survivor daily, Monday through Friday. Daily face-to-face interaction with the survivor is made available to her in order to check on her safety and other needs and to offer to schedule a meeting time. If the survivor works, the survivor's advocate/counselor may contact survivor via telephone or visiting at workplace if this is desirable and chosen by the survivor.

ii. In the event that a advocate/counselor is sick or on vacation, it is that advocate/counselor's responsibility to make sure that another staff member meets with the survivor on that day. This is documented in the survivor's file.

iii. Empowerment advocacy does not mean the advocate/counselor sits and waits for the survivor to come to her office. Many times survivors of family violence need assistance to ask for the things they need and need to have this modeled for them. This is the advocate/counselor's responsibility to daily offer and model empowerment to survivors.

m. Appointments and Availability of Services

i. Intervention staff, whether shelter or nonresidential, is provided during times when most survivors need to access and receive services. Survivors are informed of the process by which they may gain access, informally and by appointment, to advocates within the program in which they are receiving services.

ii. At the time appointments are made, staff assists individual survivors in developing a safety plan, as necessary, for traveling to and from appointments.

2. Documentation

a. Documentation for Advocacy, Counseling & Case Management contains at least:

- i. demographic data;
- ii. lethality assessment;
- iii. history of abuse;
- iv. safety plan;
- v. description of the abuser;
- vi. individualized service plan;
- vii. children's assessment (if children in the family);
- viii. notification of exceptions to confidentiality, advising survivors of advocate's duty to release confidential information in the following circumstances:
 - (a). report child abuse;
 - (b). protect against danger to self or others;
 - (c). summon emergency services;
 - (d). maintenance of safety and health standards of shelter facilities;
 - ix. release of liability form;
 - x. informed consent to release confidential information form(s);
 - xi. exit interview.

b. Documentation for Advocacy contains at least:

- i. demographic data and appropriate releases of information as needed; and
- ii. document dates of advocacy and contact.

c. Documentation for Case Notes reflects the following:

- i. notes are entered in chronological order;
- ii. notes have full signature of advocate/counselor;
- iii. entries are made immediately after all survivor contact;
- iv. white-out is not used;
- v. only necessary facts are recorded;
- vi. notes do not contain any diagnosis or clinical assessments;
- vii. notes on one survivor do not include other survivor names;
- viii. errors are corrected by drawing one line through it, write "error;" and
- ix. initial; then continue with note.

3. Computer Generated Case Notes

a. In the event of the use of computer-generated case notes or survivor records, it is the responsibility of each family violence program to assure confidentiality of information. Each program must maintain a written policy and accompanying procedures that reflect security measures. These contain, but are not necessarily limited to:

- i. a generalized policy stating the responsibility of all staff and volunteers to assure survivor confidentiality;
- ii. a standardized protocol for creating and securing computerized survivor data on all computers including portable laptops:

(a). stating which data entries are allowable and those which are not;

(b). outlining use and storage of disks;

(c). outlining the uses and protection of hard-drive storage (including protocols for use of passwords);

(d). outlining the use and methods of network systems storage;

(e). outlining protocols for the creation, routing and storage of hardcopy materials generated from computer-based records. Further, programs provide the following:

(i). access to computerized confidential records is protected by the use of appropriate software and passwords;

(ii). protocols for timely download or deletion of survivor-related information is provided when computers are shared without use of passwords;

(iii). in the event a protocol includes use of a computer's recycle bin, staff are required to delete the information from the recycle bin as a final step in the process of deleting confidential files.

4. Support Groups

a. Interactive group sessions are topic oriented, or informational and educational, and conducted in a process that is survivor-directed, and facilitated by qualified trained program staff/volunteers.

b. Family violence programs highly recommend that the adult survivors attend a minimum of three support groups while residing in a shelter or when being seen individually in non-resident advocacy. The unwillingness for this to occur by the survivor may not be used as a reason to remove survivors from programs. Also, children of adult survivors may not be restricted from attending children's group if the mother refuses support group, although the

mother may be required to remain at the program while her child is in group.

c. Family violence programs provide at least one weekly group for adult survivors while providing at the same time, a multi-age play group for the children of the adult survivors. If the children's group is not always possible, then at the very minimum, appropriate child care is provided during the adult survivor's group.

d. Support group attendance is documented in each survivor's file to include, date of group, topic of discussion, any factual information pertinent to the survivor and signed by the group facilitator.

e. Family violence shelters are encouraged to provide support groups to residents and non-residents, including former residents.

f. Support group services provide understanding and support, which includes, but is not limited to:

i. active and reflective listening;

ii. addressing the needs identified by those attending group session;

iii. building self-esteem;

iv. problem solving;

v. recognition that survivors are responsible for their own life decisions and that batterers are responsible for their violent behavior.

g. Support group services provide education and information that includes, but is not limited to:

i. how batterers maintain control and dominance;

ii. the role of society in perpetuating violence against women;

iii. the need to hold batterers accountable for their actions;

iv. the social change necessary to eliminate violence against women, including discrimination based on race, gender, sexual orientation, disabilities, economic or educational status, religion or national origin.

5. Court/Legal Advocacy

a. Family violence programs providing court advocacy assist survivors in receiving self-identified interventions and actions sought from the civil and/or criminal justice systems.

b. Court advocacy is provided by qualified, trained staff members or volunteers.

c. Family violence programs providing court advocacy services:

i. assure that appropriate staff and volunteers have a working knowledge of current Louisiana laws pertaining to family violence, as well as the local justice system's response to family violence, including court rules, in each parish services are provided.

ii. strictly monitor and prohibit staff members and volunteers from practicing law or providing legal representation if they are not properly certified to engage in such a legal practice.

iii. maintain a current list of local criminal and civil justice agencies and contact persons in each parish where services are provided.

iv. maintain a current referral list of local attorneys, including pro bono resources, who are sensitive and familiar with legal issues and orders of protection, for representation in civil and criminal cases, with contact person identified in each parish where services are provided.

v. train and offer assistance to the criminal and civil justice system within the parishes served, in order to build a working relationship and institute a law enforcement protocol involving family violence.

d. Family violence programs that provide court advocacy services provide the services in shelter and nonresidential settings.

e. Court advocates are responsible for documenting services provided and the outcome of those services in each survivor's file. If volunteers provide services, court advocates obtain the necessary information and document.

6. Children's Services

a. Programs have on staff a child advocate/counselor who is trained in a minimum of the following areas:

i. the developmental stages of childhood, including physical, social, cognitive, and emotional stages;

ii. developmentally appropriate process;

iii. a working knowledge of family violence and its effects on children (including the ways that mothers are often revictimized by the child welfare and educational system, etc.);

iv. assertive discipline techniques,

v. non-violent conflict resolution,

vi. the warning signs of child abuse,

vii. appropriate methods for interviewing children who have disclosed abuse,

viii. how the child welfare system works and their role as "mandated reporters."

b. Child Services include but are not limited to:

i. at shelters, child advocates conduct a child intake interview with the mother of the child(ren) within 48 hours of shelter arrival. Nonresidential programs conduct a child intake as soon as possible after the survivor's initial contact with the program. Intake forms are completed by the mother. Intake forms include areas of concern the mother has for each child, physical needs of the child, social or educational needs of the child, education level of the child, any learning disabilities or diagnoses, medications the child is on and what they are for, any child abuse suspected or documented, type of discipline used in the home and its effectiveness, check list for problem areas, such as, weight, eating, sleeping, hygiene, motor skills, language skills, bedwetting, handling conflict, relationship with adults and with other children;

ii. at the intake interview, the child advocate discusses child guidelines in detail, including discipline guidelines, offers help and guidance in following the guidelines, discusses child services offered. This information is documented in the survivor's record. If programs offer booklets giving this information, they can be given in addition to the required face-to-face interview with the mother;

iii. child advocates provide a physical and social assessment of each child within the first 72 hours of shelter and make appropriate referrals and appointments to meet the areas of need. In nonresidential programs the assessment follows the initial intake;

iv. child advocates have a face-to-face meeting with each child or sibling group within 48 hours of shelter following the child intake interview. In this meeting the child advocate introduces herself, lets the child(ren) know

she is there to help them in any way she can, provides a tour of the shelter, talks about the guidelines of the shelter, and the discipline guidelines. Some programs may provide shelter books which cover this material, but this does not replace the face-to-face meeting with the child(ren);

v. child advocates and trained volunteers conduct a daily (M-F) 2 hour playgroup for children from the ages of 3-11. In nonresidential programs playgroups are held at the time that survivors are in support groups. This playgroup is a time to allow children to play in a safe, structured environment. The playgroup is to be based on a developmentally-appropriate philosophy. While the playgroup is planned and facilitated by the child advocate, the child directs her/his own progress in the group. This is to empower the child, offering the child a safe and appropriate place to say "no" and to learn consistency, structure, and non-violent conflict resolution;

vi. goals of the playgroup are: breaking the "conspiracy of silence", how to protect oneself, to have a positive experience, strengthening self-esteem and self-image;

vii. each child with the assistance of the child advocate develops a personalized safety plan. The plan addresses living at the shelter and also if the mother returns to the perpetrator. Both safety plans are done as soon as possible because no one knows when the mother may return. This is documented in the mother's file;

viii. child advocates may conduct a weekly education group for the mothers, including education on developmental stages and discipline techniques. Group attendance and topic to be discussed are documented in each survivor's file;

ix. child advocates are available to meet with each mother at least once a week in an individual session. This is a time when mothers can share problems they are having and get assistance with the solutions. Methods of parenting education are respectful and non-victim blaming of the adult survivor;

x. if at all possible, each child or sibling group is given an exit interview. In this interview child(ren) can assess child services and staff in some type of developmentally appropriate way. Safety planning and discussion of transition period are discussed. Exit interview is documented in survivor's file.

7. Crisis Line or Hotline

a. Family violence programs operate a 24-hour a day, seven day a week crisis line answered by a qualified, trained staff or volunteer.

b. Hotline numbers are listed in the local telephone book and widely distributed in areas served by the FV program.

c. Hotlines are answered using the name of the family violence program.

d. Hotlines are answered by trained staff or volunteers of the programs. The use of commercial or mechanical answering services is prohibited. Volunteers are not allowed to make final determinations about shelter eligibility.

e. Programs have a minimum of two telephone lines, one of which is the designated hotline.

- f. Hotlines have call block, to safe guard against caller ID and *69 services. Local telephone companies can assist with needed information and services.
- g. When holding/transferring calls
 - i. Staff completes initial assessment as to immediate danger before putting caller on hold.
 - ii. Callers on hold are checked back with within two minutes.
 - iii. Prioritize calls through safety and lethality assessment.
 - h. Staff/volunteers answering hotline calls are in a place that is quiet, free of distractions, and confidential; a private office if possible.
 - i. If a professional, or third party, calls on behalf of a survivor of family violence generalized information may be given about family violence and program services and requirements, but the staff person or volunteer must talk directly with the survivor regarding a personalized safety plan, danger/lethality assessment and shelter, or other services, and eligibility.
 - j. Hotline services include, but are not limited to:
 - i. crisis intervention;
 - ii. assessment of caller's safety and needs;
 - iii. emergency protocols (i.e. calling 911; is batterer present or within hearing);
 - iv. lethality/danger assessment;
 - v. FV education;
 - vi. information or referrals to available community resources;
 - vii. an appropriate form documenting each hotline call, the services offered and/or referrals made, and a plan of action, including information received in calls from professionals or third parties.
 - k. When using administrative and outreach phones:
 - i. anyone answering the telephone has a working knowledge of how to screen and assist hotline callers and the requirements of the crisis line, i.e. restrictions about being placed on hold; etc.
 - ii. after-hours, weekends and holidays, administrative and outreach phones are answered by devices that clearly direct callers to the hotline.
 - l. Prior to receiving calls, hotline staff complete family violence training approved by OWS and LCADV.
 - m. If either party is using a cell or mobile phone, the caller is made aware that confidentiality cannot be guaranteed. Family violence programs do not use mobile remote phones for crisis lines because of confidentiality. This does not preclude digital phones that are confidential.
 - n. If call forwarding is used to assure staffing of the service, it is the responsibility of the program staff to assure safety and confidentiality. Some issues to be addressed through written protocols when calls are forwarded to non-program locations:
 - i. the potential for family member to answer or pick-up (by way of an extension line) a hotline call;
 - ii. the potential of a personal answering machine to pick-up on an incoming call;
 - iii. the potential for calls to be routed to a cellular telephone that is answered by an advocate/volunteer in public place;

- iv. the potential of staff's/volunteer's personal telephone lines to be traced or identified through "caller ID" or other features.
- AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.
- HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:538 (April 2001).
- §1731. Transitional Living/Housing Program**
- A. Basic Considerations. These standards assure family violence programs offering transitional living/housing as part of their service delivery plan provide appropriate and quality services to survivors of family violence and their children in an empowering, non blaming way. Service provided through the transitional living/housing program is not an activity but a process that involves the survivor in goal setting, case management, needs assessment, resource identification and staff/survivor interaction.
- B. Standards
1. Persons eligible for transitional living/housing are survivors of family violence who have some affiliation with the family violence program providing housing either in a residential or non-residential capacity, have left an abusive relationship and meet the following criteria.
 - a. The resident has a willingness to work or enroll in a continuing education or job training/readiness program.
 - b. The resident agrees to a criminal history check to ensure that there are no pending legal issues that pose a threat to the other residents.
 2. Programs offering transitional living/housing develop and implement formal screening procedures that include the following:
 - a. application process;
 - b. screening process:
 - i. direct service staff approval;
 - ii. administrative approval;
 - c. verification process (Verification of status should be given to applicant in writing);
 - i. accepted/ready for housing;
 - ii. accepted/added to waiting list;
 - iii. conditional acceptance (to include explanation);
 - iv. denied.
 3. Programs offering transitional living/housing establish rental agreements with eligible survivors entering the program to include the following:
 - a. written agreement for transitional living/housing;
 - b. deposits (when applicable);
 - c. move in date;
 - d. guidelines for housing and transitional living;
 - e. visual inspection and inventory (if applicable) of housing site.
 4. The grievance procedure reflects OWS Standards and individual program policy. Grievance procedures are provided, in writing, to each resident.
 5. Programs provide comprehensive supportive service/case management that is survivor directed and includes appropriate referrals to alternate resources, safe living arrangements, safety planning, child care, children's activities, individual and group/support counseling, assistance with housing and public assistance programs, legal advocacy, life skill development and staff/survivor interaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2122B and R.S. 46:2127B1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Women's Services, LR 27:542 (April 2001).

Vera Clay
Executive Director

0104#018

RULE

Department of Health and Hospitals Board of Veterinary Medicine

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

The Louisiana Board of Veterinary Medicine hereby amends 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.

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 27:543 (April 2001).

Chapter 11. Preceptorship Program

§1103. Definitions

* * *

Limited Approval A 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 A 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 A 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 A 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 27:543 (April 2001).

§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 as 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 27:543 (April 2001).

§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 27:543 (April 2001).

§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:

A.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 27:544 (April 2001).

§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 27:544 (April 2001).

§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 27:544 (April 2001).

§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 27:544 (April 2001).

§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 27:544 (April 2001).

§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 27:544 (April 2001).

§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 27:545 (April 2001).

Kimberly B. Barbier
Administrative Director

0104#023

RULE

**Department of Health and Hospitals
Office of Public Health**

Genetic Diseases C Neonatal Screening (LAC 48:V.6303)

Under the authority of R.S. 40:5 and 40:1299 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health amends Subsections A, B, E and G of LAC 48:V.6303 as follows.

Title 48

PUBLIC HEALTH GENERAL

Part V. Public Health Services

Subpart 19. Genetic Diseases Services

Chapter 63. Neonatal Screening

§6303. Purpose, Scope, Methodology

A. Purpose and Scope. R.S. 40:1299.1.2.3, require physicians to test Louisiana newborns for phenylketonuria, congenital hypothyroidism, sickle cell disease and biotinidase deficiency. The Office of Public Health (OPH) maintains a laboratory for performing screening tests for hyperphenylalanemia manifest in phenylketonuria (PKU), for thyroxine (T₄) and thyroid stimulating hormone (TSH) used in congenital hypothyroidism detection, hemoglobin identification for sickle cell disease and enzyme assay for detection of biotinidase deficiency. Definitive diagnostic tests are provided if the screening test is positive. The newborn screening battery may also be available through other approved laboratories (see Subsection G). Act 0997 of the 1993 Legislative Regular Session of the state of Louisiana, removed galactosemia from the newborn screening battery and replaced it with a program for informing physicians and hospitals of the current medical standards for diagnosing and treating children who exhibit clinical symptoms which suggest the presence of galactosemia.

B. Methodology

1. Filter Paper Specimen Form, (Lab-10) used in blood specimen collection for neonatal screening, can be obtained at parish health units. There are two different types of Lab-10 forms which are color coded.

a. ...

b. For private and non-Medicaid patients, red border Lab-10 forms are used. These red border Lab-10 forms are \$18 each.

2. ...

3. For non-Medicaid patients with a financial status of greater than 100 percent of the Poverty Guidelines as established by the Department of Health and Hospitals (DHH) and who attend a parish health unit for just the newborn screening service, the parent or guardian will be charged \$18 upon registering at the parish health unit.

C. - C.2. ...

D. Notification of Screening Results

1. Providers are notified immediately of positive screens by telephone. Otherwise, submitters should receive the result slip from the State Central Lab within two to three weeks. Submitters may call the Central Lab for results 10 days after submission. The telephone number for the Central Lab is (504) 568-5371. Results are also available to submitters 24 hours a day, 365 days a year through the Voice Response System with FAX (VRS) which is accessed by using a touch tone telephone. Information on using VRS can be obtained by calling the Genetic Diseases Program Office at 1-800-871-9548.

E. Unsatisfactory Specimens. The accuracy of a test depends on proper collection of the blood spot. Specimens of unsatisfactory quality for testing will be indicated on the result slip. Training on collecting adequate specimens can be arranged by calling the Genetics Nurse at telephone number (504) 568-5070.

F. - F.1.f. ...

G Acceptable Newborn Screening Testing Methodologies and Procedures for Medical Providers Not using the State Laboratory. Laboratories performing or intending to perform the state mandated newborn screening battery on specimens collected on Louisiana newborns must meet the conditions specified below pursuant to R.S. 40:1299.1.

1. The testing battery must include testing for phenylketonuria (PKU), congenital hypothyroidism, biotinidase deficiency, and the following hemoglobinopathies: sickle cell disease, SC disease, thalassemias, E disease and C disease.

2. ...

3. A laboratory must perform the complete battery at one site. Using two laboratories for completion of the total battery is unacceptable as this increases the risk of error and delay in reporting.

4. When using dried blood spots, only specimen forms using filter paper approved by the Centers for Disease Control (CDC) are acceptable.

5. Only the following testing methodologies are acceptable without prior approval.

Disease	Testing Methodology
PKU	Flourometric Tandem Mass Spectroscopy Guthrie Bacterial Inhibition Assay Phenylalanine level cut-off: >3 mg, dL, call Genetics Office immediately for obtaining phenylalanine/tyrosine
Congenital Hypothyroidism	Radioimmunoassay (RIA) or Enzyme Immunoassay (EIA) methods for T ₄ and/or Thyroid Stimulating Hormone (TSH) which have been calibrated for neonates
Biotinidase Deficiency	Qualitative or Quantitative Enzymatic Colorimetric or Fluorometric

Hemoglobinopathies (Sickle cell)	Cellulose acetate/citrate agar Capillary isoelectric focusing (CIEF) Gel isoelectric focusing (IEF) High Pressure Liquid Chromatography (HPLC) Sickle Dex CNOT Acceptable Controls must include: F, A, S, C, E Result Reporting: by phenotype Positive/negative is NOT acceptable
New Food and Drug Administration approved methodologies may be used if found to be acceptable by the Genetic Diseases Program. Approval should be requested in writing 60 days before the intended date of implementation (see Genetic Diseases Program mailing address below). Requests for approvals will be based on documentation of FDA approval and an inhouse validation study of said methodology.	

6. The laboratory must comply with the regulations for proficiency testing as mandated in the Clinical Laboratory Improvement Amendments of 1988 (CLIA 88 Section §493.1707). When using dried blood spots, the laboratory must participate in the proficiency testing program of the Centers for Disease Control. The laboratory must report all proficiency testing results to the Genetic Diseases Program Office within one month of receiving the report from the proficiency testing provider.

7. The laboratory must be able to provide test result data to physicians and nurses on their specific patients by telephone and by FAX or by use of the internet, 24 hours a day 365 days a year.

8. Mandatory Reporting of Positive Test Results Indicating Disease

a. To ensure appropriate and timely follow-up, positive results must be reported, along with patient demographic information as specified below to the Genetic Diseases Program Office either by FAX at (504) 568-7722 or by telephone at (504) 568-5070 and followed up by the mailing of the information to the following address: Genetic Diseases Program, P.O. Box 60630, Room 308, New Orleans, LA 70160-0630.

b. Specific time deadlines for reporting positive results indicating probable disease after data reduction and interpretation to the Genetics Office:

- i. PKU: report a phenylalanine level of >3 mg/dL on the initial or repeat blood specimen within 2 hours;
- ii. congenital hypothyroidism: report confirmatory test results within 24 hours;
- iii. biotinidase deficiency: report confirmatory results within 24 hours;
- iv. sickle cell disease: report results of FS, FSC, FSA from initial specimens within 24 hours.

c. The specified information to be reported:

- i. child's name;
- ii. parent or guardian's name;
- iii. child's street address;
- iv. child's date of birth;
- v. child's sex;
- vi. child's race;
- vii. parent's telephone number;
- viii. collection date;
- ix. test results;
- x. primary care physician;
- xi. age at collection (< or > 48 hours old);
- xii. birth weight;

- xiii. full term or premature or gestational age; and
- xiv. transfusion

Yes___ Date of last transfusion No___
(if available)

9. Provision of Follow-up Services. To ensure that reporting time deadlines are met for every positive result indicating probable disease under b above, a follow-up system must be in operation. The protocol for a follow-up system may rely on the submitting hospital for the follow-up action which must include the following.

a. Locate the infant and ensure diagnostic and medical care:

- i. telephone call to medical provider within 24 hours of positive lab result;
- ii. if there is no medical provider available, a telephone call should be made to parent/guardian;
- iii. if the parent/guardian does not have a telephone, then notify them by certified and regular mail;
- iv. if there is no response to mail within 5 days, a home visit should be made;

v. report to the Genetic Diseases Program Office all patients with suspect results who are unable to be located.

b. Results of repeat testing should be obtained.

- i. If results are normal, the case can be closed.
- ii. If results are abnormal, the case must be reported to the Genetic Diseases Program Office.

10. Reporting requirements of private laboratories to the Genetic Diseases Program Office for public health surveillance and quality assurance purposes.

a. The laboratory must submit quarterly statistical reports to the Genetic Diseases Program Office that indicate the number of specimens screened by method, the number of specimens unsatisfactory for testing, the number normal and positive, and for screening of hemoglobinopathies, the number by phenotype (see Genetics Office address in Subsection G.7).

b. Effective July 1, 2001, the laboratory must also report to the Genetic Diseases Program Office via electronic transmission newborn screening results on all Louisiana newborns screened monthly or quarterly. The method of transmitting as well as the reporting must be by diskette or another mutually agreed upon form of electronic transmission. The file format and data layout will be determined by the Genetic Diseases Program. Essential patient data is the following:

- i. child's name;
- ii. parent or guardian's name;
- iii. child's street address;
- iv. child's date of birth;
- v. child's sex
- vi. child's race
- vii. collection date; and
- viii. test results.

11. The laboratory must register by letter with the Genetic Diseases Program of the Office of Public Health each year. This letter must contain the following and be received in the Genetic Diseases Program Office by February 1 each year:

a. assurance of compliance with the requirements described in Subsection G.1.-9;

- b. the type of testing methodologies used;
- c. the number of specimens projected to be tested or actually tested annually;
- d. the type of specimen(s) used, i.e., filter paper or whole blood;
- e. reporting format for positive/abnormal test results.

12. Guidelines and recommendations on quality assurance of newborn screening from nationally recognized committees and authors should be considered in the establishment and operation of a newborn screening system.²

Reference

¹American Academy of Pediatrics, Committee on Genetics: New Issues in Newborn Screening for Phenylketonuria and Congenital Hypothyroidism. *Pediatrics* 1982; 60-104-6.

²References pertaining to Subsection G:

- a. Committee on Genetics, American Academy of Pediatrics Issues in Newborn Screening. *Pediatrics* 1992;89:345.
- b. CORN Newborn Screening Committee, Council on Regional Networks for Genetic Services. U.S. Newborn Screening System Guidelines: Statement of the Council of Regional Networks for Genetic Services. *Screening*, 1 (1992 pp. 135-147).
- c. Andrews L *Legal Liability and Quality Assurance in Newborn Screening*. Chicago, American Bar Foundation (1985), pp. 82-83.
- d. National Committee for Clinical Laboratory Standards (NCLS) Standards for Blood Collection on Filter Paper for Neonatal Screening. Document LA4-A2 July 1992.
- e. Committee on Assessing Genetic Risks, Division of Health Sciences Policy, Institute of Medicine *Assessing Genetic Risks* National Academy Press, Washington, D.C. (1994).
- f. Clinical Laboratory Improvement Amendments, 1988. Health Care Financing Authority (HCFA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299, et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, LR 17:378 (April 1991), LR 18:1131 (October 1992), LR 20:1386 (December 1994), LR 23:301 (March 1997), LR 27:545 (April 2001).

David W. Hood
Secretary

0104#032

RULE

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

**CommunityCARE ProgramC Changing
Primary Care Providers**

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

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 4701 of the Balanced Budget Act of 1997 governing when a CommunityCARE recipient may change primary care providers. CommunityCARE recipients may request to change primary care providers for cause at any time. They may change primary care providers without

cause at any time during the first 90 days of enrollment with a primary care provider and at least every 12 months thereafter.

David W. Hood
Secretary

0104#043

RULE

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

**Early and Periodic Screening, Diagnosis and Treatment
Program (EPSDT)C Hearing Aids**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended 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 amended Rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the May 20, 1996 Rule to establish the following prior authorization criteria for hearing aids.

Prior Authorization Criteria

Hearing aids and related services are only covered for EPSDT recipients up to the age of 21. Approval is granted only when there is a significant hearing loss as documented by audiometric or electrophysiologic data from a licensed audiologist and medical clearance and prescription from an ear specialist (otologist).

The audiologist must furnish a report, including an audiogram (if applicable) and all test results, indicating the degree and type of hearing loss. A hearing loss greater than 20 decibels with an average hearing level in the range 250-2000 Hz is considered significant. Additional required medical and social information shall include:

1. the recipient's age;
2. expected benefit of the hearing aid;
3. previous and current use of a hearing aid;
4. additional disabilities expected to influence the use of a hearing aid; and
5. referrals made on the recipient's behalf to early intervention programs, special education programs or other rehabilitative services.

Hearing aid repairs, batteries, and ear molds shall not require prior authorization. Limitations on the purchase of ear molds are established as follows:

1. one ear mold will be allowed every 90 days for EPSDT recipients from birth through age four; and
2. one ear mold per year will be allowed for EPSDT recipients from age five up to 21.

David W. Hood
Secretary

0104#044

RULE

Department of Insurance Office of the Commissioner

Regulation 76C 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 hereby adopts Regulation 76 of the Louisiana Department of Insurance, which will govern the privacy of consumer financial information in this state.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 99. Regulation 76C Privacy of Consumer

Subchapter A. General Provisions

§9901. Authority

A. This regulation is adopted pursuant to R.S. 22:2 which charges the commissioner of insurance with the duty to enforce and administer all of the provisions of the Insurance Code, the purpose of which is to regulate the business of insurance in all of its phases in the public interest. Sections 501(b) and 505(a)(6) of the Gramm-Leach-Bliley Act specifically designate the Department of Insurance as the agency to establish the appropriate standards covering any person engaged in providing insurance under state law. R.S. 22:3 grants the commissioner of insurance authority to promulgate rules and regulations as are necessary for the implementation of the provisions of Title 22. R.S. 22:3052 specifically refers to the protection of the interests of insurance policyholders in this state with respect to financial institution insurance sales, and R.S. 22:3054 grants the commissioner of insurance authority to promulgate rules and regulations as may be necessary to effectuate the provisions of Chapter 6 Financial Institution Sales in Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054, and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001).

§9903. Purpose

A. The purpose of this regulation is to govern the treatment of nonpublic personal financial information about individuals by all licensees of the state insurance department. This regulation:

1. requires a licensee to provide notice to individuals about its privacy policies and practices;
2. describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and
3. provides methods for individuals to prevent a licensee from disclosing that information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054, and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001).

§9905. Scope and Applicability

A. This regulation applies to:

1. nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This regulation does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

B. Compliance. A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001).

§9907. Rule of Construction

A. The examples in this regulation and the sample clauses in Appendix A of this regulation are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001).

§9909. Definitions

A. As used in this regulation, unless the context requires otherwise:

Affiliate Any company that controls, is controlled by or is under common control with another company.

Clear and Conspicuous that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. Examples:

- a. reasonably understandable. A licensee makes its notice reasonably understandable if it:
 - i. presents the information in the notice in clear, concise sentences, paragraphs, and sections;
 - ii. uses short explanatory sentences or bullet lists whenever possible;
 - iii. uses definite, concrete, everyday words and active voice whenever possible;
 - iv. avoids multiple negatives;
 - v. avoids legal and highly technical business terminology whenever possible; and
 - vi. avoids explanations that are imprecise and readily subject to different interpretations;
- b. designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:
 - i. uses a plain-language heading to call attention to the notice;
 - ii. uses a typeface and type size that are easy to read;
 - iii. provides wide margins and ample line spacing;
 - iv. uses boldface or italics for key words; and
 - v. in a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars;

c. notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

- i. places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
- ii. places a link on a screen that consumers frequently access, such as a page on which transactions are conducted that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

Collect To obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

Commissioner The commissioner of insurance.

Company Any natural person, partnership, corporation, association, business, trust, unincorporated organization, or other form of business enterprise, plural or singular, as the case demands.

Consumer Can individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative. Examples:

- a. an individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship;
- b. an applicant for insurance prior to the inception of insurance coverage is a licensee's consumer;
- c. an individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution;
- d. an individual is a licensee's consumer if:
 - i.(a). the individual is a beneficiary of a life insurance policy underwritten by the licensee;
 - (b). the individual is a claimant under an insurance policy issued by the licensee;
 - (c). the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or
 - (d). the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and
- ii. the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under §§9929, 9931 and 9933 of this regulation.

e. Provided that the licensee provides the initial, annual and revised notices under §§9911, 9913 and 9919 of this regulation to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, and

further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under §§9929, 9931 and 9933 of this regulation, an individual is not the consumer of the licensee solely because he or she is:

- i. a participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;
- ii. covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or
- f.i. in no event shall the individuals, solely by virtue of the status described in Subparagraph e.i through iii above, be deemed to be customers for purposes of this regulation;
- g. An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee;
- h. an individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

Consumer Reporting Agency Has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

Control

- a. ownership, control or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
- b. control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
- c. the power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

Customer A consumer who has a customer relationship with a licensee.

Customer Relationship A continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. Examples:

- a. a consumer has a continuing relationship with a licensee if:
 - i. the consumer is a current policyholder of an insurance product issued by or through the licensee; or
 - ii. the consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee;
- b. a consumer does not have a continuing relationship with a licensee if:
 - i. the consumer applies for insurance but does not purchase the insurance;
 - ii. the licensee sells the consumer airline travel insurance in an isolated transaction;
 - iii. the individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;
 - iv. the consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

v. the consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

vi. the customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

vii. the individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

viii. for the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

Financial Institution Cfor the purposes of this regulation means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial institution does not include:

a. any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

b. the Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

iii. institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

Financial Product or Service Cany product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

a. Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

Insurance Product or Service Cany product or service that is offered by a licensee pursuant to the insurance laws of this state.

a. insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

Licensee Call licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered with the commissioner of insurance.

a. Producers include persons required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including, but not limited to agents, brokers, solicitors and surplus lines brokers.

b. A licensee is not subject to the notice and opt out requirements for:

i. nonpublic personal financial information set forth in Subchapters A, B, C; and D of this regulation if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

(a). the principal otherwise complies with, and provides the notices required by, the provisions of this regulation; and

(b). the licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.

c.i. Subject to Clause i, *licensee* shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to R.S. 22:1248, et seq. of this state's laws.

ii. A surplus lines broker or unauthorized insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Subchapters A, B, C and D of this regulation provided:

(a). the broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under §9929 of this regulation, except as permitted by §9931 or §9933 of this regulation; and

(b). the broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

Nonaffiliated Third Party Cany person except:

a. a licensee's affiliate; or

b. a person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

c. nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

Nonpublic Personal Information Cnonpublic personal financial information.

Nonpublic Personal Financial Information C

a. personally identifiable financial information; and

b. any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

c. Nonpublic personal financial information does not include:

- i. health information;
- ii. publicly available information, except as included on a list described in Subsection (b) of this section; or
- iii. any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

d. Examples of Lists

i. Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

ii. Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

Opt Out

a. means any direction by the consumer that the licensee not disclose nonpublic personal financial information about the consumer to a non affiliated third party, other than as permitted by Sections 9929, 9931, and 9933.

Personally Identifiable Financial Information Any information:

- a. a consumer provides to a licensee to obtain an insurance product or service from the licensee;
- b. about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or
- c. the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

d. Examples

i. Information included. Personally identifiable financial information includes:

(a). information a consumer provides to a licensee on an application to obtain an insurance product or service;

(b). account balance information and payment history;

(c). the fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(d). any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(e). any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(f). any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and

(g) information from a consumer report.

ii. Information not included. Personally identifiable financial information does not include:

- (a). health information;
- (b). a list of names and addresses of customers of an entity that is not a financial institution; and
- (c). information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

Publicly Available Information Any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- a. federal, state or local government records;
- b. widely distributed media; or
- c. disclosures to the general public that are required to be made by federal, state or local law.

d. Reasonable Basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

i. that the information is of the type that is available to the general public; and

ii. whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

e. Examples

i. Government Records. Publicly available information in government records includes information in government real estate records and security interest filings.

ii. Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

f. Reasonable Basis

i. A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

ii. A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3053, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:548 (April 2001).

Subchapter B. Privacy and Opt Out Notices for Financial Information

§9911. Initial Privacy Notice to Consumers Required

A. Initial Notice Requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

- 1. customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and

2. consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by §§9931 and 9933.

B. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection A.2 of this section if:

1. The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by §§9931 and 9933, and the licensee does not have a customer relationship with the consumer; or

2. A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

C. When the Licensee Establishes a Customer Relationship

1. General Rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

2. Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

a. becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

b. agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

D. Existing Customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection A of this section as follows:

1. the licensee may provide a revised policy notice, under §9919, that covers the customer's new insurance product or service; or

2. if the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection A of this section.

E. Exceptions to allow subsequent delivery of notice.

1. A licensee may provide the initial notice required by Subsection A.1 of this section within a reasonable time after the licensee establishes a customer relationship if:

a. establishing the customer relationship is not at the customer's election; or

b. providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

2. Examples of Exceptions

a. Not at Customer's Election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism

and the customer does not have a choice about the licensee's acquisition or assignment.

b. Substantial Delay of Customer's Transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

c. No Substantial Delay of Customer's Transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

F. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to §9921. If the licensee uses a short-form initial notice for non-customers according to §9915D, the licensee may deliver its privacy notice according to §9915D(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:551 (April 2001).

§9913. Annual Privacy Notice to Customers Required

A.1. General Rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

2. Example. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

B.1. Termination of Customer Relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

2. Examples

a. A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

b. A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

c. For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

d. A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

D. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to §9921.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:552 (April 2001).

§9915. Information to be Included in Privacy Notices

A. General Rule. The initial, annual and revised privacy notices that a licensee provides under §§9911, 9913 and 9919 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

1. the categories of nonpublic personal financial information that the licensee collects;

2. the categories of nonpublic personal financial information that the licensee discloses;

3. the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under §§9931 and 9933.

4. the categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under §§9931 and 9933;

5. if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under §9929 (and no other exception in §§9931 and 9933 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

6. an explanation of the consumer's right under §9923 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

7. any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

8. the licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

9. any disclosure that the licensee makes under Subsection B of this section.

B. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under §§9931 and 9933, the licensee is not required to list those exceptions in the initial or annual privacy notices required by §§9911 and 9913. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples

1. Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

a. information from the consumer;

b. information about the consumer's transactions with the licensee or its affiliates;

c. information about the consumer's transactions with nonaffiliated third parties; and

d. information from a consumer reporting agency.

2. Categories of Nonpublic Personal Financial Information a Licensee Discloses

a. A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection C.1 of this section, as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

i. information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

ii. transaction information, such as information about balances, payment history and parties to the transaction; and

iii. information from consumer reports, such as a consumer's creditworthiness and credit history.

b. A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

c. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

3. Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

a. A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

b. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes

appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

c. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

4. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in §9929 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection A.5 of this section if it:

a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection A2. of this section, as applicable; and

b. States whether the third party is:

i. A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

ii. A financial institution with whom the licensee has a joint marketing agreement.

5. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§9931 and 9933, the licensee may simply state that fact, in addition to the information it shall provide under Subsections A.1, A.8, A.9, and Subsection B of this section.

6. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

D. Short-Form Initial Notice With Opt Out Notice for Non-Customers

1. A licensee may satisfy the initial notice requirements in §§9911A(2) and 9917C for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in §9917.

2. A short-form initial notice shall:

a. be clear and conspicuous;

b. state that the licensee's privacy notice is available upon request; and

c. explain a reasonable means by which the consumer may obtain that notice.

3. The licensee shall deliver its short-form initial notice according to §9921. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the

licensee's privacy notice, the licensee shall deliver its privacy notice according to §9921.

4. Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

a. provides a toll-free telephone number that the consumer may call to request the notice; or

b. for a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

E. Future disclosures. The licensee's notice may include:

1. Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

2. Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

F. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:553 (April 2001).

§9917. Form of Opt Out Notice to Consumers and Opt Out Methods

A.1. Form of Opt Out Notice. If a licensee is required to provide an opt out notice under §9923, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

a. that the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

b. that the consumer has the right to opt out of that disclosure; and

c. a reasonable means by which the consumer may exercise the opt out right.

2. Examples.

a. Adequate Opt Out Notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

i. identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in §9915A(2) and (3), and states that the consumer can opt out of the disclosure of that information; and

ii. identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

b. Reasonable Opt Out Means. A licensee provides a reasonable means to exercise an opt out right if it:

i. designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

ii. includes a reply form together with the opt out notice;

iii. provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

iv. provides a toll-free telephone number that consumers may call to opt out.

c. Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

i. the only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

ii. the only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

d. Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

B. Same Form as Initial Notice Permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with §9911.

C. Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with §9911, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

D. Joint Relationships

1. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in Paragraph (5) of this subsection).

2. Any of the joint consumers may exercise the right to opt out. The licensee may either:

a. treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

b. permit each joint consumer to opt out separately.

3. If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

4. A licensee may not require all joint consumers to opt out before it implements any opt out direction.

5. Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

a. send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary;

b. treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction;

c. permit John and Mary to make different opt out directions. If the licensee does so:

i. it shall permit John and Mary to opt out for each other;

ii. if both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and

iii. if John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

E. Time to Comply with Opt Out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

F. Continuing Right to Opt Out. A consumer may exercise the right to opt out at any time.

G. Duration of consumer's opt out direction.

1. A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

2. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

H. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to §9921.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:554 (April 2001).

§9919. Revised Privacy Notices

A. General Rule. Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under §9911, unless:

1. the licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

2. the licensee has provided to the consumer a new opt out notice;

3. the licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

4. the consumer does not opt out.

B. Examples

1. Except as otherwise permitted by §§9929, 9931, and 9933, a licensee shall provide a revised notice before it:

a. discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

b. discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

c. discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

2. A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

C. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to §9921.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:555 (April 2001).

§9921. Delivery

A. How to Provide Notices. A licensee shall provide any notices that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

B.1. Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

- a. hand-delivers a printed copy of the notice to the consumer;
- b. mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;
- c. for a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;
- d. for an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

2. Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

- a. only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or
- b. sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

C. Annual Notices Only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

1. the customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or
2. the customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

D. Oral Description of Notice Insufficient. A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

E. Retention or accessibility of notices for customers.

1. For customers only, a licensee shall provide the initial notice required by §9911A(1), the annual notice required by §9913A, and the revised notice required by

§9919 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

2. Examples of Retention or Accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

- a. hand-delivers a printed copy of the notice to the customer;
- b. mails a printed copy of the notice to the last known address of the customer; or
- c. Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

F. Joint Notice with Other Financial Institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

G. Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of §§9911, 9913 and 9919, respectively, by providing one notice to those consumers jointly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

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Subchapter C. Limits on Disclosures of Financial Information

§9923. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties

A.1. Conditions for Disclosure. Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

- a. the licensee has provided to the consumer an initial notice as required under §9911;
- b. the licensee has provided to the consumer an opt out notice as required in §9917;
- c. the licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
- d. the consumer does not opt out.

2. Examples of Reasonable Opportunity to Opt Out. A licensee provides a consumer with a reasonable opportunity to opt out if:

a. by mail. The licensee mails the notices required in Paragraph 1 of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices;

b. by electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph 1 of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account;

c. isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph 1 of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

B. Application of opt out to all consumers and all nonpublic personal financial information.

1. A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

2. Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

C. Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:556 (April 2001).

§9925. Limits on Re-Disclosure and Reuse of Nonpublic Personal Financial Information

A.1. Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in §§9931 or 9933 of this regulation, the licensee's disclosure and use of that information is limited as follows:

a. the licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

b. the licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

c. the licensee may disclose and use the information pursuant to an exception in §§9931 or 9933 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

2. Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

B.1. Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in §§9931 or 9933 of this regulation, the licensee may disclose the information only:

a. to the affiliates of the financial institution from which the licensee received the information;

b. to its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

c. to any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

2. Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in §§9931 or 9933:

a. the licensee may use that list for its own purposes; and

b. the licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in §§9931 or 9933, such as to the licensee's attorneys or accountants.

C. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in §§9931 or 9933 of this regulation, the third party may disclose and use that information only as follows:

1. the third party may disclose the information to the licensee's affiliates;

2. the third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

3. the third party may disclose and use the information pursuant to an exception in §§9931 or 9933 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in §§9931 or 9933 of this regulation, the third party may disclose the information only:

1. to the licensee's affiliates;

2. to the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

3. to any other person, if the disclosure would be lawful if the licensee made it directly to that person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:557 (April 2001).

§9927. Limits on Sharing Account Number Information for Marketing Purposes

A. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

1. to the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

2. to a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

3. to a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples

1. Policy Number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

2. Policy or Transaction Account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:557 (April 2001).

Subchapter D. Exceptions to Limits on Disclosures of Financial Information

§9929. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing

A. General Rule

1. The opt out requirements in §§9917 and 9923 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

- a. provides the initial notice in accordance with §9911; and
- b. enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in §§9931 or 9933 in the ordinary course of business to carry out those purposes.

2. Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph 1.b of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in §9931 or §9933 in the ordinary course of business to carry out that joint marketing.

B. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial

products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

C. Definition of Joint Agreement. For purposes of this section, *joint agreement* means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:558 (April 2001).

§9931. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions

A. Exceptions for Processing Transactions at Consumer's Request. The requirements for initial notice in §9911A.2, the opt out in §§9917 and 9923, and service providers and joint marketing in §9929 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

- 1. servicing or processing an insurance product or service that a consumer requests or authorizes;
- 2. maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;
- 3. a proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or
- 4. reinsurance or stop loss or excess loss insurance.

B. Necessary to Effect, Administer or Enforce a Transaction. That the disclosure is:

- 1. required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- 2. required, or is a usual, appropriate or acceptable method:
 - a. to carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;
 - b. to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - c. to provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;
 - d. to accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;
 - e. to underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance

benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

f. In connection with:

i. authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

ii. the transfer of receivables, accounts or interests therein; or

iii. the audit of debit, credit or other payment information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:558 (April 2001).

§9933. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

A. Exceptions to Opt Out Requirements. The requirements for initial notice to consumers in §9911A.2, the opt out in §§9917 and 9923, and service providers and joint marketing in §9929 do not apply when a licensee discloses nonpublic personal financial information:

1. with the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

2.a. to protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

b. to protect against or prevent actual or potential fraud or unauthorized transactions;

c. for required institutional risk control or for resolving consumer disputes or inquiries;

d. to persons holding a legal or beneficial interest relating to the consumer; or

e. to persons acting in a fiduciary or representative capacity on behalf of the consumer;

3. to provide information to an insurance rate advisory organizations for the purpose of gathering statistical rate making information, guaranty funds or agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

4. to the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Record keeping), the commissioner of insurance, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

5.a. to a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

b. from a consumer report reported by a consumer reporting agency;

6. actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

7.a. To comply with federal, state or local laws, rules and other applicable legal requirements;

b. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

c. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

8. for purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan.

9. for Purposes related to:

a. an order of rehabilitation or liquidation pursuant to R.S. 22:731 et seq.;

b. any other provision of law which authorizes the Commissioner of Insurance to take over, rehabilitate, liquidate, or wind up the affairs of a licensee.

B. Example of Revocation of Consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under §9917F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:3052, 22:3054 22:731, et seq. and Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:559 (April 2001).

Subchapter E. Additional Provisions

§9945. Protection of Existing Requirements

A. Nothing in this regulation shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) or of Louisiana Revised Statutes Sections 22:1474, 23:1200.3 or 22:3063, and no inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of the federal Fair Credit Reporting Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:1474, 22:3052, 22:3054, 22:3063, 23:1200.3, Gramm-Leach-Bliley Act, Public Law 106-102 – Nov. 12, 1999, 15 U.S.C. 1681, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:559 (April 2001).

§9947. Nondiscrimination

A. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:1214, 22:2020; 22:3052; 22:3054, 22:3063.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:559 (April 2001).

§9949. Violations and Penalties

A. Any failure to comply with this regulation shall be considered a violation of R.S. 22:1214, et seq.

B. Violations of this regulation shall subject the violators to penalties as provided in R.S. 22:1217, 22:1217.1, and any other applicable provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, 22:3, 22:1214, et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:559 (April 2001).

§9951. Severability

A. If any provision or item of this regulation, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the regulation which can be given effect without the invalid provision, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 24:175.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:560 (April 2001).

§9953. Effective Date

A. Effective Date. This regulation is effective November 13, 2000. In order to provide sufficient time for licensees to establish policies and systems to comply with the requirements of this regulation, the commissioner has extended the time for compliance with this regulation until July 1, 2001.

B.1. Notice Requirement for Consumers who are the Licensee's Customers on the Compliance Date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

2. Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

C. Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of §9929A.1.b of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:560 (April 2001).

Appendix AC Sample Clauses

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1—Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of §9915A.1 to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2—Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of §9915A.2 to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in §§9929, 9931 and 9933.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premiums, and payment history"]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as "above" or "below"].

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of §§9915A.2, 3, and 4 to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§9931 and 9933.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of §9915A.3 to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§9929, 9931 and 9933, as well as when permitted by the exceptions in §§9931 and 9933.

Sample Clause A -4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5–Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of §9915A(5) related to the exception for service providers and joint marketers in §9929. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A -5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A -5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6–Explanation of opt out right

(institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of §9915A.6 to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§9929, 9931 and 9933.

Sample Clause A -6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of

opting out, such as “call the following toll-free number: (insert number)”].

A-7–Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of §9915A.8 to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A -7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Inquiries concerning this regulation should be directed to Brenda S. Nation, Executive Counsel, P.O. Box 94214, Baton Rouge, LA 70804-9214; telephone: (225) 342-4674; fax (225) 342-1632.

J. Robert Wooley
Acting Commissioner

0104#017

RULE

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 amended and re-enacted its existing Rule 10.

The 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 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. Until May 1, 2003, up to ten (10) excess hours, acquired during the previous renewal period, may be carried forward and applied to the continuing education requirement.

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. Until May 1, 2003, up to ten (10) excess hours, acquired during the previous renewal period, may be carried forward and applied to the continuing education requirement.

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 27:561 (April 2001).

§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 27:562 (April 2001).

§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 27:562 (April 2001).

§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 addressed.

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 27:563 (April 2001).

§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 27:563 (April 2001).

§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 27:563 (April 2001).

J. Robert Wooley
Acting Commissioner

0104#008

RULE

**Department of Public Safety and Corrections
Board of Private Investigator Examiners**

Duties of Executive Secretary; Meetings; Licensure; Registration Card; Continuing Education; Complaint Procedure; Motion for Continuance; Subpoena for Hearing (LAC 46:LVII.103, 105, 509, 515, 518, 721, and 915)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505B(1), the Department of Public Safety and Corrections, Board of Private Investigator Examiners, hereby amends Part LVII of Title 46, amending Chapter 1, Section 103.A, B and C; Section 105.B; Chapter 5, Section 509.A.9, Section 515.A, Section 518.C; Chapter 7, Section 721.A.4 and 5; Chapter 9, Section 913.C and Section 915.A to change the title "executive secretary" to "executive director"; and to amend Chapter 5, Section 515.A to delete the social security number from the list of items required to be placed on a registration card.

These rules and regulations are amendments to the initial rules and regulations promulgated by the Board of Private Investigator Examiners.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LVII. Private Investigator Examiners

Chapter 1. Organizational and General Provisions

§103. Duties of Executive Director

A. The executive director shall be the chief administrative officer and shall serve at the pleasure of the board.

B. Subject to the supervision of and direction of the board, the executive director shall:

1. - 8. ...

C. The executive director may spend up to \$500 for board purchases without prior approval by the board or the chair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1332 (October 1993), amended LR 27:563 (April 2001).

§ 105. Meetings of the Board

A. ...

B. The executive director shall give a written notice to all interested members of the public who make a timely request for notice of any board meeting.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1332 (October 1993), amended LR 27:563 (April 2001).

Chapter 5. Application, Licensing, Training, Registration and Fees

§509. Form and Term of License

A. Licenses, when issued, shall be in the form of a wall certificate no larger than 82 inches by 11 inches in size. The certificate shall contain the following information:

1. - 8. ...
9. signature of executive director;

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1334 (October 1993), amended LR 27:564 (April 2001).

§515. Registration Card

A. The registration card shall be no larger than 23 inches by four inches in size. The registration card shall contain the following information:

1. name of investigator;
2. name of agency under whose authority license is issued;
3. date of expiration;
4. current two inches by two inches color photograph;
5. drivers license number;
6. company name;
7. company address (city and state);
8. license number;
9. signature of executive director;
10. signature of license holder;
11. state insignia; and
12. board seal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1334 (October 1993), amended LR 27:564 (April 2001).

§518. Continuing Education

A. - B. ...

C. Any licensee who wishes to apply for an extension of time to complete educational instruction requirements must submit a letter request setting forth reasons for the extension request to the Executive Director of the LSBPIE 30 days prior to license renewal. The Training Committee shall rule on each request. If an extension is granted, the investigator shall be granted 30 days to complete the required hours. Hours completed during a 30-day extension shall only apply to the previous year.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:371 (May 1996), amended LR 27:564 (April 2001).

Chapter 7. Client-Investigator Relationship

§721. Complaint Procedure

A. A request for a hearing on a complaint before the Board of Private Investigator Examiners shall contain the following:

1. - 3. ...

4. a receipt showing a copy of the complaint has been sent to the person, or to a statement from the executive director stating that a copy of said complaint had been delivered to the person named in the complaint;

5. all complaints or requests for a hearing before the Private Investigator Examiners Board, must be made by certified or registered mail to the executive director or the PI Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1336 (October 1993), amended LR 27:564 (April 2001).

Chapter 9. Rules of Adjudication for Board of Private Investigator Examiners

§913. Motion For Continuance

A. - B. ...

C. If an initial motion for continuance is not opposed, it may be granted by the executive director. Any motion for continuance of hearing which is opposed shall be referred for decision to the presiding officer of the hearing panel designated with respect to the proceeding, who shall rule upon such motion on the papers filed, without hearing. The presiding officer, in his discretion, may refer any motion for continuance to the entire panel for disposition, and any party aggrieved by the decision of a presiding officer on a motion for continuance may request that the motion be reconsidered by the entire panel. In any such case, the panel shall rule on such motion on the papers filed, without hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1338 (October 1993), amended LR 27:564 (April 2001).

§915. Subpoenas for Hearing

A. Upon request of the respondent or complaint counsel and compliance with the requirements of §915, the executive director shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by a witness and the production of books, papers, and other documentary evidence at an adjudication hearing.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1338 (October 1993), amended LR 27:564 (April 2001).

Charlene Mora
Chairman

0104#004

RULE

Department of Public Safety and Corrections Liquefied Petroleum Gas Commission

Requirements, Classes of Permits, Expiration of Permit
(LAC 55:IX.1507 and 1513)

Editor's Note: Sections 1503 and 1513 are being repromulgated to correct citation errors. The original Rule may be viewed in the March 20, 2001 edition of the Louisiana Register on page 423.

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, the Commission hereby amends its rules.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 15. Sale, Storage, Transportation and Handling of Anhydrous Ammonia

Subchapter A. New Dealers

§1507. 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 state's 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.1. - 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 27:423 (March 2001), repromulgated LR:565 (April 2001).

§1513. Classes of Permits

A. - A.2.c.vi. ...

d. Must pay permit for first year's 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.2.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 27:423 (March 2001), repromulgated LR 27:565 (April 2001)

Charles M. Fuller
Director

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