

Notices of Intent

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.603, 613, and 4313)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's Accountability System is an evolving system with different components. §603 is revised to include all students in the state-level cohort regardless of entry or exit dates. §613 is revised to clarify that schools cannot be awarded points for students designated as attendees if they are dropouts; changes the points awarded for School Performance Scores for students receiving TOPS award or completing TOPS programs; changes the points awarded for students receiving an academic endorsement. §4313 is revised to omit the District Responsibility Index label as a trigger for districts to enter District Improvement status; mandate timeframes for these districts to submit District Improvement Plans to the LDE and for the LDE to review require districts to implement these approved Plans; describes sanctions for districts entering District Improvement in line with current law, requiring that they either implement a new curriculum, arrange for particular schools to come under public governance per R.S. 17:1990, or authorize students to transfer to a higher-performing public school operated by another local educational agency after reaching an agreement with the other LEA.

Title 28 EDUCATION

Part LXXXIII. Bulletin III—The Louisiana School, District, and State Accountability System

Chapter 6. Graduation Index

§603. Determining a Cohort for a Graduation Index

A. - H. ...

I. All cohort members, regardless of entry or exit dates, are included in the state-level cohort.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 33:424 (March 2007), LR 33:

§613. Calculating a Graduation Index

A. ...

1. Students who do not dropout and do not April 2007 NOI earn a diploma, a GED, a Skills Certificate, or a

Certificate of Achievement after 4 years of high school are defined as attendees.

Student Result	Points
Academic Endorsement	180
TOPS Opportunity Award OR Career/Technical Endorsement	160
BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140
Regular HS Diploma	120
GED	90
Skills Certificate/Certificate of Achievement	60
Attendee	30
Dropout	0

B. - E. ...

Sample Graduation Index Calculation			
Student Count	Result	Points Per	Points
2	Academic Endorsements	180	360
8	TOPS Opportunity Award OR Career/Technical Endorsement	160	1280
15	BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140	2100
20	Regular Diploma	120	2400
10	GED	90	900
6	Skills Certificate or Certificate of Achievement	60	360
4	Attendee	30	120
15	Dropout	0	0
80 Total Students			7520
Attendee from prior year earned GED (90-30)			60
Attendee from prior year earned Skills Cert. (60-30)			30
Dropout from prior year earned Reg. Diploma (120-0)			120
Total Incentive Points			210
Total Points			7730
7730 ÷ 80 =		Graduation Index	96.6

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:

Chapter 43. District Accountability §4313. Corrective Actions

A. ...

B. Districts shall be evaluated on the subgroup component. Districts that fail all clusters, in the same subject, on the subgroup component shall complete a district self-assessment and submit it to the Louisiana Department of Education.

1. - 2. ...

C. Districts that are identified for improvement by the subgroup component shall write District Improvement Plans

based on the prior years' self-assessments and submit those plans to the LDE within 60 days of identification.

1. ...
2. The DOE shall review each District Improvement Plan and within 30 days of receipt of the plan, recommend revisions until the plan is deemed acceptable.
3. ...
4. The district shall implement the District Improvement Plan immediately upon approval by the DOE.

D. Districts that fail in all grade-clusters, in the same subject, to achieve AYP in the subgroup component for a third consecutive year or in 2 consecutive years of the next 3 years shall enter District Improvement Level 2 and have a district level scholastic audit conducted by the LDE.

E. Districts that fail all three grade-clusters for which they entered District Improvement the year following or 2 of the 3 years following entry into District Improvement Level 2 shall enter District Improvement Level 3 and address the findings of the district level scholastic audit immediately upon identification by implementing one of the following.

1. Fully implement a new curriculum that is based on state standards, providing appropriate professional development that offers substantial promise of improving educational achievement (funding requirements listed in NCLB).

2. Remove particular schools from the jurisdiction of the local educational agency and establish arrangements for public governance and supervision of such schools as provided in R.S. 17:1990 and Chapter 24: Recovery School District.

3. Authorize students to transfer to a higher-performing public school operated by another local educational agency after reaching an agreement with the other LEA.

F. Districts shall exit District Improvement if they pass Subgroup AYP in the same subject for which they entered District Improvement in the same cluster for 2 consecutive years. An example is in the following table.

Examples of Districts That Entered District Improvement (DI) in 2004 Due to Math Results.							
	2005			2006			Result
	K-5	6-8	9-12	K-5	6-8	9-12	
Cluster Performance	Pass	Fail	Fail	Fail	Pass	Pass	Remain in DI
	Pass	Pass	Pass	Fail	Fail	Fail	Advance to DI Level 2
	Pass	Fail	Fail	Pass	Fail	Fail	Exit DI
	Fail	Pass	Pass	Fail	Fail	Pass	Exit DI

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:424 (February 2005), LR 31:635 (March 2005), LR 31:1256 (July 2005), LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office, which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina Ford, State Board of

Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System

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

Bulletin 111 §603 is revised to include all students in the state graduation rate regardless of entry or exit dates.

§613 is revised to clarify that schools cannot be awarded points for students designated as attendees if they are dropouts; changes the points awarded for School Performance Scores for students receiving TOPS award or completing TOPS programs; changes the points awarded for students receiving an academic endorsement.

§4313 is revised to omit the District Responsibility Index label as a trigger for districts to enter District Improvement status; mandate timeframes for these districts to submit District Improvement Plans to the LDE and for the LDE to review and require districts to implement these approved Plans; describes sanctions for districts entering District Improvement in line with current law, requiring that they either implement a new curriculum, arrange for particular schools to come under public governance per R.S. 17:1990, or authorize students to transfer

to a higher-performing public school operated by another local educational agency after reaching an agreement with the other LEA.

There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
Management and Finance
0706#009

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28: CXI. 305, 2012-2029, and 3507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*. Bulletin 118 contains the Board of Elementary and Secondary Education (BESE) and the Division of Standards, Assessments, and Accountability (DSAA) test policy rules, guidelines, and procedures for easy access during statewide test administration. The purpose of this project is to provide information regarding the division of Chapter 3, Test Security, §305.A.14, into two separate entries; the addition of Achievement Level Descriptors for LAA 2 in Chapter 20; and revisions to Chapter 35, Assessment of Students in Special Circumstances.

The document will consolidate statewide test information and provide easy access to that information. It is necessary to revise the bulletin at this time to incorporate guidelines for newly developed statewide assessments used in testing and add new language to established assessment guidelines.

Title 28 EDUCATION

Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

Chapter 3. Test Security

§305. Test Security Policy

A. - A.13. ...

14. School districts must ensure that individual student test data are protected from unauthorized access and disclosure.

a. The Louisiana Department of Education's LEAPdata Query is designed for teachers and contains students' private information, including state test scores and state identification numbers. The system is password protected and requires a user ID and an assigned password

for access. The system is not for public use, and any student information from the system must not be disclosed to anyone other than a state, district, or school official as defined by the Family Educational Rights and Privacy Act of 1974 (FERPA). A state, district, or school official is a person employed by the state, district, or school as an administrator, supervisor, district test coordinator, school test coordinator, principal, teacher, or principal's designated office staff. Such a user must have a legitimate educational purpose to review an educational record in order to fulfill his/her professional responsibility. Curiosity does not qualify as a right to know. State, district and school officials who are granted a password to these systems must abide by FERPA law. Disclosure of passwords to anyone other than those authorized is prohibited. Disclosure of a student's data to their parent or guardian must be in accordance with FERPA. For more information on FERPA, see the U.S. Department of Education Web page at <http://www.ed.gov/offices/OM/fpco/ferpa/>.

i. LEAPdata Query System. Principals should contact their DTC or Backup DTC for assistance in training teachers. After teaching, all school users (e.g., teachers, counselors, test coordinators) must read and sign the security agreement and return it to the principal. A new security agreement should be signed by all users each year after the new password letters for schools are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a replacement password. Principals should always contact their DTC or backup DTC for assistance and training.

b. The Louisiana Department of Education's LEAPweb Reporting System is designed for administrators only and contains students' private information, including state test scores and state identification numbers. The system is password protected and requires a user ID and an assigned password for access. The system is not for public use and any student information from the system must not be disclosed to anyone other than a state, district, or school official as defined by the Family Educational Rights and Privacy Act of 1974 (FERPA). A state, district, or school official is a person employed by the state, district, or school as an administrator, supervisor, district test coordinator, school test coordinator, principal, and the principal's designated office staff. Such a user must have a legitimate educational purpose to review an educational record in order to fulfill his/her professional responsibility. Curiosity does not qualify as a right to know. State, district, and school users who are granted a password to this system must read and abide by Family and Educational Rights Privacy Act (FERPA). Disclosure of passwords to anyone other than those authorized is prohibited. Disclosure of a student's data to their parent or guardian must be in accordance with FERPA. For more information on FERPA, see the U.S. Department of Education Web page at <http://www.ed.gov/offices/OM/fpco/ferpa/>.

i. LEAPweb Reporting System. At the school level, only principals (not teachers) and their designated school personnel (test coordinators, counselors, or office staff with whom the principal shares his/her PIN) should have access to the system and must sign a security agreement. A new security agreement should be signed by all users each year after the new password letters for schools

are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a replacement password. Principals should always contact their DTC or Backup DTC for assistance and training.

ii. Security agreements must also be signed by DTCs for the LEAPweb Reporting and LEAPdata Query Systems and returned to the LDE.

c. All users who have access to these systems and leave their positions at a district or school site must not use or share the password.

15. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:

Chapter 20. LEAP Alternate Assessment, Level 2

Subchapter D. Achievement Level Descriptors

§2012. Grade 5 Achievement Level Descriptors

A. Grade 5 English Language Arts Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate overall understanding of what they read; 2. answer literal questions and make simple inferences about information in texts; 3. identify story elements, literary devices, and author's purpose; 4. research a topic by locating information in a variety of print and electronic resources; 5. express some creative and/or critical thinking in response to a writing task, characterized by a central idea, observable organization, and supporting details; and 6. demonstrate audience awareness through use of grade-appropriate vocabulary, sentence variety, and evidence of personal style or voice.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate partial understanding of what they read; 2. identify stated main idea in text, make simple inferences, and draw connections to personal experiences; 3. research a topic by locating some information in commonly used print and electronic resources; 4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, weak organization, and few supporting details; and 5. demonstrate limited audience awareness through use of simple but appropriate vocabulary, simple sentence structures, and few elements of personal style.

Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate minimal understanding of what they read; 2. make minimal connections between information in texts and personal experiences; 3. research a topic by locating minimal information in a few commonly used resources; 4. develop a minimal response to a writing task, characterized by a weak central idea, little observable organization, and few supporting details; and 5. demonstrate minimal audience awareness through the use of limited vocabulary, simple sentence structures, and little or no personal style or voice.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate at least minimal understanding of what they read; 2. make at least minimal connections between information in texts and personal experiences; 3. research a topic by locating at least minimal information in a few commonly used resources; 4. develop at least a minimal response to a writing task, characterized by a weak central idea, little observable organization, and few supporting details; and 5. demonstrate at least minimal audience awareness through the use of limited vocabulary, simple sentence structures, and little or no personal style or voice.

B. Grade 5 Mathematics Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. solve real-life problems using whole numbers; 2. use estimation strategies and mental math to determine reasonable values and solutions; 3. use variables and open sentences to express number relationships; 4. identify solutions to equations describing real-life situations; 5. identify positive solutions to inequalities on a number line; 6. use appropriate tools and procedures to measure accurately and to estimate and calculate measurements; 7. identify points on a coordinate grid; 8. identify basic geometric transformations and symmetries; 9. organize and display data using tables and graphs; 10. represent probabilities as common fractions between 0 and 1, inclusive; and 11. recognize and describe how number patterns and patterns in real-life situations are increasing, decreasing, or repeating.

Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. demonstrate an understanding of relations among fractions, including mixed numbers, and relations among decimals; 2. solve simple problems involving whole number properties and relationships; 3. demonstrate understanding of the connection between models and mathematical language; 4. choose tools necessary to measure accurately; 5. recognize and classify common two-dimensional figures by attributes; 6. read tables and graphs and use the data to solve simple problems; 7. describe the likelihood of events occurring in real-life situations; and 8. identify missing elements in a variety of patterns.
Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. demonstrate some understanding of relations among fractions, including mixed numbers, and relations among decimals; 2. solve a limited number of simple problems involving whole number properties and relationships; 3. demonstrate some understanding of the connection between models and mathematical language; 4. choose—with limited degree of accuracy or with some consistency—tools necessary to measure accurately; 5. recognize and classify a limited number of common two-dimensional figures by attributes; 6. show minimal skills in reading tables and graphs and using the data to solve simple problems; 7. inconsistently describe the likelihood of events occurring in real-life situations; and 8. identify missing elements in a limited number of patterns.
Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to:
<ol style="list-style-type: none"> 1. demonstrate at least some understanding of relations among fractions, including mixed numbers, and relations among decimals; 2. solve at least a limited number of simple problems involving whole number properties and relationships; 3. demonstrate at least some understanding of the connection between models and mathematical language; 4. choose—with at least some degree of accuracy—tools necessary to measure accurately; 5. recognize and classify at least a limited number of common two-dimensional figures by attributes; 6. show at least some skills in reading tables and graphs and using the data to solve simple problems; 7. at least minimally describe the likelihood of events occurring in real-life situations; and 8. identify missing elements in at least a limited number of patterns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:

§2013. Grade 6 Achievement Level Descriptors

A. Grade 6 English Language Arts Achievement Level Descriptors

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. demonstrate overall understanding of what they read; 2. identify main ideas and supporting details, and answer literal and simple inferential questions; 3. research a topic by locating information in a variety of electronic and print resources (e.g., newspapers, magazines, brochures, maps, legends); 4. express some creative and/or critical thinking in response to a writing task, characterized by a central idea, observable organization, and supporting details; and 5. demonstrate audience awareness through use of grade-appropriate vocabulary, a variety of sentence structures, and evidence of personal style or voice.
Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. demonstrate partial understanding of what they read; 2. identify some literal and implied information and stated main ideas in text and make connections to personal experience; 3. research a topic by locating some information in commonly used electronic and print resources; 4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, some evidence of organization, few transitions, and few supporting details; and 5. demonstrate limited audience awareness through use of simple but appropriate vocabulary, simple sentence structures, and few elements of personal style.
Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. demonstrate minimal understanding of what they read; 2. identify concrete ideas and make minimal connections between information in texts and personal experiences; 3. research a topic by locating minimal information in a few commonly used resources; 4. construct a minimal response to a writing task, characterized by a weak central idea, little observable organization, and a few supporting details; and 5. demonstrate minimal audience awareness through the use of limited vocabulary, simple sentences, and limited evidence of elements of personal style or voice.
Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to:
<ol style="list-style-type: none"> 1. demonstrate at least minimal understanding of what they read; 2. identify concrete ideas and make at least minimal connections between information in texts and personal experiences; 3. research a topic by locating at least minimal information in a few commonly used resources; 4. construct at least a minimal response to a writing task, characterized by a weak central idea, little observable organization, and a few supporting details; and 5. demonstrate at least minimal audience awareness through the use of limited vocabulary, simple sentences, and limited evidence of elements of personal style or voice.

B. Grade 6 Mathematics Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> show understanding of the relationships among fractions and decimals; solve simple proportions by using models and in real-life situations; estimate and solve simple problems involving one or two computations, including addition and subtraction of fractions and decimals; evaluate simple expressions involving one variable and formulas involving one or two variables, by substituting whole numbers; solve simple equations, using a variety of strategies; use algebraic and numeric expressions and equations to describe relationships; recognize and use measuring tools appropriate for given tasks; demonstrate an understanding of the magnitude and relative size of common units of measure; find perimeter and area of simple geometric figures; name and describe two- and three-dimensional geometric shapes; recognize and use transformations of simple geometric shapes; demonstrate an understanding of data represented in a variety of displays; recognize basic concepts of probability, and determine probabilities of simple events; and extend and describe simple arithmetic and geometric patterns.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> recognize and identify ratios, fractions, decimals, and percents from models and in real-life situations; locate and compare integers on a number line; complete a simple input/output table; recognize common units of length and area; find horizontal and vertical lengths of simple geometric figures graphed on a grid; recognize and name basic geometric shapes; interpret data from a graph; determine possible results and likelihood of favorable outcomes of simple events; and identify missing elements in a variety of number patterns.
Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> demonstrate minimal recognition and identification of ratios, fractions, decimals, and percents from models and in real-life situations; locate and compare—with some degree of accuracy—integers on a number line; demonstrate some evidence of completing a simple input/output table; recognize a few common units of length and area; show minimal skills in finding horizontal and vertical lengths of simple geometric figures on a grid; recognize and name a limited number of basic geometric shapes; show limited skills in interpreting data from a graph; determine possible results and likelihood of favorable outcomes of some simple events; and identify missing elements in a limited number of number patterns.

Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> demonstrate at least minimal recognition and identification of ratios, fractions, decimals, and percents from models and in real-life situations; locate and compare—with at least some degree of accuracy—integers on a number line; demonstrate at least some evidence of completing a simple input/output table; recognize at least a few common units of length and area; show at least minimal skills in finding horizontal and vertical lengths of simple geometric figures graphed on a grid; recognize and name at least a limited number of basic geometric shapes; show at least limited skills in interpreting data from a graph; determine possible results and likelihood of favorable outcomes of at least some simple events; and identify missing elements in at least a limited number of number patterns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:

§2014. Grade 7 Achievement Level Descriptors

A. Grade 7 English Language Arts Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> demonstrate overall understanding of what they read; identify main ideas and supporting details, story elements (including character motivation and plot sequence), and author's purpose; extend ideas in text by making simple inferences and drawing conclusions; research a topic by locating and interpreting information in a variety of print and electronic resources; express some critical and/or creative thinking in response to a writing task; develop an appropriate response to a writing task, characterized by a central idea, observable organization, simple transitions, and supporting details; and demonstrate audience awareness through use of grade-appropriate vocabulary, sentence variety, and evidence of personal style or voice.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> demonstrate partial understanding of what they read; identify some literal and implied information and stated main ideas, basic story elements, some literary devices, and an author's purpose; research a topic by locating some information in electronic and print resources; demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, weak organization, and few supporting details; and demonstrate limited audience awareness through the use of simple vocabulary, simple sentences, and few elements of personal style.

Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate minimal understanding of what they read; 2. construct minimal interpretations and/or extensions of text; 3. research a topic by locating minimal information in a commonly used print or electronic resources; 4. construct a minimal response to a writing task, characterized by a weak central idea, some observable organization, and some supporting information; and 5. demonstrate minimal audience awareness through use of simple vocabulary, simple sentences, and little or no personal style or voice.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate at least minimal understanding of what they read; 2. construct at least minimal interpretations and/or extensions of text; 3. research a topic by locating at least minimal information in commonly used print or electronic resources; 4. construct at least a minimal response to a writing task, characterized by a weak central idea, some observable organization, and some supporting information; and 5. demonstrate at least minimal audience awareness through the use of simple vocabulary, simple sentences, and little or no personal style or voice.

B. Grade 7 Mathematics Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. estimate and compute equivalent fractions, percents, and decimals; 2. solve one- and two-step real-life problems involving equations and inequalities; 3. evaluate formulas or expressions involving one or two variables, by substituting whole numbers; 4. use algebraic expressions, equations, and inequalities to describe numerical relationships; 5. convert between common measurements in the same system, and compare and order benchmark measurements between systems; 6. calculate circumference and area of circles; 7. draw and identify angles and measurements in simple polygons and circles; 8. recognize geometric transformations; 9. demonstrate understanding of graphs involving continuous data and discrete data; 10. compute simple probabilities and use basic mathematical terms associated with probability, such as event and favorable outcomes; and 11. recognize, describe, and extend patterns.

Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. compare and order rational numbers; 2. solve single-step problems involving positive rational numbers; 3. match algebraic expressions, equations, and inequalities to verbal statements; 4. order measurements within the same system; 5. determine area and perimeter of simple geometric shapes; 6. identify points in all four quadrants of a coordinate grid; 7. interpret discrete data from a variety of graphs; 8. represent the probabilities of simple events as common fractions, given sample space and number of favorable outcomes; and 9. extend simple number patterns.
Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. compare and order—with some consistency—rational numbers; 2. solve some single step problems involving positive rational numbers; 3. match some algebraic expressions, equations, and inequalities to verbal statements; 4. order a limited number of measurements within the same system; 5. determine area and perimeter of a limited number of simple geometric shapes; 6. identify a few points in all four quadrants of a coordinate grid; 7. interpret discrete data from a limited number of graphs; 8. represent some probabilities of simple events as common fractions, given sample space and number of favorable outcomes; and 9. extend some simple number patterns.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. compare and order—with at least some consistency—rational numbers; 2. solve at least some single-step problems involving positive rational numbers; 3. match at least some algebraic expressions, equations, and inequalities to verbal statements; 4. order at least a limited number of measurements within the same system; 5. determine area and perimeter of at least a limited number of simple geometric shapes; 6. identify at least a few points in all four quadrants of a coordinate grid; 7. interpret discrete data from at least a limited number of graphs; 8. represent at least some probabilities of simple events as common fractions, given sample space and number of favorable outcomes; and 9. extend at least some simple number patterns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:

§2015. Grade 8 Achievement Level Descriptors

Editor's Note: This Section has been moved from §2013.

A. Grade 8 English Language Arts Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate both literal and overall understanding of what they read; 2. identify some elements of text and an author's purpose; 3. extend the ideas in text by making simple inferences and drawing conclusions; recognize and relate connections among ideas in texts by drawing conclusions; 4. research a topic by selecting and using information in various sources; 5. express some critical and/or creative thinking in response to a writing task; 6. develop a central idea with a consistent focus, appropriate organization, and elaboration with some supporting details; and demonstrate audience awareness through use of appropriate but general language, and some sentence variety, and a sense of personal style.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate partial understanding of what they read; 2. make a few interpretations and extensions of ideas in texts; 3. make simple and broad connections between text and personal experiences; 4. research a topic by locating some information in commonly used sources; 5. demonstrate a partial response to a writing task; 6. develop a weak central idea with some evidence of organization and elaboration with few or inappropriate supporting details; and demonstrate limited awareness of audience through use of simple or inappropriate vocabulary and simple sentences.
Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate partial understanding of what they read; 2. make a few interpretations and extensions of ideas in the texts; 3. make simple and broad connections between the text and personal experiences; 4. research a topic by locating some information in commonly used sources; 5. demonstrate a partial response to a writing task; 6. develop a weak central idea with some evidence of organization and elaboration with a few or inappropriate supporting details; and 7. demonstrate limited awareness of audience through use of simple or inappropriate vocabulary and simple sentences.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. understand what they read; 2. make minimal interpretations and extensions of ideas in the text; 3. locate some information within commonly used sources; 4. develop a response to a writing task with some evidence of a central idea, attempted organization, and some supporting details; and 5. show minimal audience awareness through use of simple vocabulary and simple sentences.

B. Grade 8 Mathematics Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. complete problems correctly with the help of prompts such as diagrams, charts, and graphs; 2. solve routine, real-world problems through the appropriate selection and use of strategies and technological tools—including calculators and geometric shapes; 3. use fundamental algebraic and informal geometric concepts in problem solving; 4. determine which available data are necessary and sufficient for correct solutions and use them in problem solving; and 5. show limited skill in communicating mathematically.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. complete problems correctly with the help of prompts such as diagrams, charts, and graphs; 2. solve one-step problems involving basic computation (+, -, x, ÷) and follow procedural steps with instructional assistance; 3. recognize basic geometric figures; 4. recognize simple, obvious patterns; 5. use tools of technology; 6. apply conceptual knowledge inconsistently; and 7. demonstrate difficulty in transferring knowledge and skills to problem-solving situations.
Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. complete a limited number of problems correctly with the help of prompts such as diagrams, charts, and graphs; 2. solve few one-step problems involving basic computation (+, -, x, ÷) and follow procedural steps with detailed instructional assistance; 3. recognize a limited number of basic geometric figures; 4. recognize a limited number of simple, obvious patterns; 5. minimally use the tools of technology; 6. show minimal or inconsistent application of conceptual knowledge; and 7. demonstrate minimal or inappropriate transfer of knowledge and skills to problem-solving situations.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. complete a limited number of problems correctly with the help of prompts such as diagrams, charts, and graphs; 2. solve few one-step problems involving basic computations (+, -, x, ÷) and follow procedural steps with detailed instructional assistance; 3. recognize a limited number of basic geometric figures; 4. recognize a limited number of simple, obvious patterns; 5. minimally use the tools of technology; 6. show minimal application of conceptual knowledge; and 7. demonstrate minimal transfer of knowledge and skills to problem-solving situations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:272 (February 2007), amended LR 33:

§2016. Grade 9 Achievement Level Descriptors

A. Grade 9 English Language Arts Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate overall understanding of what they read; 2. identify main points or ideas in text and extend ideas in text by drawing conclusions, making inferences, and identifying explicit cause/effect relationships; 3. identify story elements, literary devices, and author's purpose or viewpoint; 4. research a topic by locating and interpreting information in a variety of electronic and print resources; 5. express some critical and/or creative thinking in response to a writing task; 6. construct an appropriate multiparagraph response to a writing task, characterized by a central idea, observable organization, simple transitions, and supporting information; and 7. demonstrate audience awareness through intentional use of appropriate vocabulary, sentence variety, and personal style or voice.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate partial understanding of what they read; 2. identify literal and implied information and stated main ideas in text, story elements, some literary devices, and author's purpose; 3. research a topic by locating information in electronic and print resources; 4. demonstrate inconsistent control in response to a writing task, characterized by a weak central idea, some evidence of organization and transitions, and few supporting details; and 5. demonstrate limited audience awareness through the use of simple vocabulary, simple sentence structures, and few elements of personal style.
Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate minimal understanding of what they read; 2. construct minimal interpretations and/or extensions of text; 3. research a topic by locating minimal information in commonly used print or electronic resources; 4. develop a minimal response to a writing task, characterized by a weak central idea, limited observable organization, and some supporting information; and 5. demonstrate minimal audience awareness in written responses through the use of simple vocabulary, simple sentences, and little or no personal style or voice.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate at least minimal understanding of what they read; 2. construct at least minimal interpretations and/or extensions of text; 3. research a topic by locating at least minimal information in commonly used print or electronic resources; 4. develop at least a minimal response to a writing task, characterized by a weak central idea, limited observable organization, and some supporting information; and 5. demonstrate at least minimal audience awareness in written responses through the use of simple vocabulary, simple sentences, and little to no personal style or voice.

B. Grade 9 Mathematics Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. simplify numerical expressions involving multiple operations, using order of operations; 2. represent numbers as exponential expressions with positive, integral exponents; 3. use proportional reasoning to solve real-life problems; 4. use algebraic expressions, equations, and inequalities to describe tables and verbal statements in real-life situations; 5. solve multi-step equations and inequalities in one variable; 6. choose appropriate common units (U.S. and metric) to make measurements; 7. demonstrate understanding of precision and accuracy; 8. solve simple problems involving indirect measurement in real-life situations; 9. recognize and graph linear equations to interpret and solve real-life problems, and use appropriate terminology to describe slope, intercept, point, intersection, etc.; 10. draw translations and line reflections in a coordinate system; 11. read, organize, construct, and interpret data presented in a variety of formats and make generalizations using these representations; and 12. demonstrate a fundamental understanding of graphical representations of functions.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate understanding of different number systems, including whole numbers, integers, rational numbers, and real numbers; 2. perform basic operations with positive rational numbers; 3. determine whether problems require exact or approximate solutions; 4. recognize ratios and proportions that describe real-life situations; 5. use calculators to evaluate polynomials for given values of the variables; 6. solve single-step equations and inequalities in one variable; 7. estimate, calculate, and make measurements using common units of measure; 8. locate points on a coordinate grid; 9. recognize geometric transformations on a coordinate grid; 10. match data displays to real-life situations, and vice versa; 11. follow and interpret processes expressed in flow charts; and 12. recognize and describe coordinate graphs of functions.
Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate some understanding of different number systems, including whole numbers, integers, rational numbers, and real numbers; 2. perform a few basic operations with positive rational numbers; 3. determine—with some consistency—whether problems require exact or approximate solutions; 4. recognize some ratios and proportions that describe real-life situations; 5. minimally use calculators to evaluate polynomials for given values of the variables; 6. solve some single-step equations and inequalities in one variable; 7. estimate, calculate, and make measurements—with a limited degree of accuracy—using common units of measure; 8. show limited skills in locating points on a coordinate grid; 9. recognize a limited number of geometric transformations on a coordinate grid; 10. match some data displays to real-life situations, and vice versa;

<ol style="list-style-type: none"> 11. follow and interpret some processes expressed in flow charts; and 12. minimally recognize and describe coordinate graphs of functions.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate at least some understanding of different number systems, including whole numbers, integers, rational numbers, and real numbers; 2. perform at least a few basic operations with positive rational numbers; 3. determine—with at least some consistency—whether problems require exact or appropriate solutions; 4. recognize at least some ratios and proportions that describe real-life situations; 5. at least minimally use calculators to evaluate polynomials for given values of the variables; 6. solve at least some single-step equations and inequalities in one variable; 7. estimate, calculate, and make measurements—with at least a limited degree of accuracy—using common units of measure; 8. show at least limited skills in locating points on a coordinate grid; 9. recognize at least a limited number of geometric transformations on a coordinate grid; 10. match at least some data displays to real-life situations, and vice versa; 11. follow and interpret at least some processes expressed in flow charts; and 12. at least minimally recognize and describe coordinate graphs and function.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:

§2017. Grade 10 Achievement Level Descriptors

Editor's Note: This Section has been moved from §2015.

A. Grade 10 English Language Arts Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate overall understanding of what they read and make some interpretations; 2. identify elements of text and an author's style; 3. extend ideas in text by making simple inferences and some connections to personal experiences; 4. research a topic by selecting and using information in various sources; 5. demonstrate some evidence of critical, analytical, and/or creative thinking in response to a writing task; 6. develop a response with a central idea, evidence of some observable organization, and elaboration with some supporting details; and 7. demonstrate audience awareness through a sense of personal style or voice and some variety in vocabulary and sentence structure.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate partial understanding of what they read; 2. identify some elements of text and an author's purpose; 3. make simple or broad connections between text and personal experiences;

<ol style="list-style-type: none"> 4. research a topic by locating information in commonly used sources; 5. demonstrate a partial response to a writing task; 6. develop a response with a weak central idea, some evidence of organization, and minimal elaboration or supporting details; and 7. demonstrate limited audience awareness through use of weak personal style or voice, simple or inappropriate vocabulary, and simple sentences.
Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. demonstrate a minimal understanding of what they read; 2. identify few elements of text and an author's purpose; 3. make minimal connections between text and personal experiences; 4. research a topic by locating minimal information in commonly used sources; 5. demonstrate a minimal response to a writing task; 6. develop a response with a weak or unfocused idea, attempted organization, and little or irrelevant support; and 7. demonstrate minimal audience awareness through use of weak personal style or voice, simple or inappropriate vocabulary, and simple sentences.
Pre-Foundational
<p>A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.</p> <p>Students scoring at this level need to develop the ability to:</p> <ol style="list-style-type: none"> 1. understand what they read; 2. identify some elements of text; 3. make minimal connections between text and personal experiences; 4. locate information within commonly used sources; 5. develop a response to a writing task using a general focus, attempted organization, and minimal support; and 6. demonstrate minimal audience awareness through use of simple vocabulary and simple sentences.

B. Grade 10 Mathematics Achievement Level Descriptors

Basic
<p>A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. use estimation to verify solutions and determine the reasonableness of results as applied to routine real-world problems; 2. use algebraic and geometric reasoning strategies to solve problems; 3. recognize relationships presented in verbal, algebraic, tabular, and graphical forms; 4. demonstrate knowledge of geometric relationships and corresponding measurement skills; 5. apply statistical reasoning in the organization and display of data and in reading tables and graphs; 6. generalize from patterns and examples in the areas of algebra, geometry, and statistics; 7. use correct mathematical language and symbols to communicate mathematical relationships and reasoning processes; and 8. use calculators appropriately to solve problems.
Approaching Basic
<p>A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.</p> <p>Students scoring at this level generally exhibit the ability to:</p> <ol style="list-style-type: none"> 1. use estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems;

<ol style="list-style-type: none"> 2. show limited use of fundamental algebraic, geometric, and statistical reasoning in problem solving; 3. interpret data presented in various forms; 4. show limited skills in communicating mathematically; and 5. demonstrate limited application of conceptually knowledge.
Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. use some estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems; 2. show minimal knowledge of fundamental algebraic, geometric, and statistical reasoning in problem-solving; 3. interpret data presented in limited forms; 4. show minimal skills in communicating mathematically; and 5. demonstrate minimal or inappropriate application of conceptual knowledge.
Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to:
<ol style="list-style-type: none"> 1. use some estimation and measurement to verify solutions and determine the reasonableness of results as applied to routine real-world problems; 2. show minimal knowledge of fundamental algebraic, geometric, and statistical reasoning in problem-solving; 3. interpret data presented in limited forms; 4. show minimal skills in communicating mathematically; and 5. demonstrate minimal application of conceptual knowledge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:273 (February 2007), LR 33:

§2019. Grade 11 Achievement Level Descriptors

Editor's Note: This Section has been moved from §2017.

A. Grade 11 Science Achievement Level Descriptors

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. formulate valid hypotheses; 2. design a simple experiment; 3. draw appropriate conclusions; 4. develop inferences from experimentation and apply that information to new situations; 5. distinguish scientific principles from pseudoscience; and 6. apply scientific principles to their everyday life.
With inquiry as the core, students at the Basic level begin to identify unifying concepts and processes among the science disciplines—physical, life, earth/space, and the environmental sciences.
Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. know and understand fundamental science facts and concepts concerning the world; and 2. make observations, form a reasonable hypothesis, identify variables, interpret data, and draw conclusions.
These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.
Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the

foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level generally exhibit the ability to:
<ol style="list-style-type: none"> 1. demonstrate limited knowledge and understanding of fundamental science facts and concepts concerning the world; and 2. make simple observations, attempt to form a hypothesis, identify a limited number and type of variables, minimally interpret data, and draw conclusions that may be inappropriate or inaccurate.
These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.
Pre-Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.
Students scoring at this level need to develop the ability to:
<ol style="list-style-type: none"> 1. demonstrate knowledge and understanding of fundamental science facts and concepts concerning the world with minimal accuracy or consistency; and 2. make simple observations, attempt to form a hypothesis, identify a limited number and type of variables, minimally interpret data, and draw conclusions.
These skills should be demonstrated through the science disciplines—physical, life, earth/space, and the environmental sciences.

B. Grade 11 Social Studies Achievement Level Descriptors

Basic
A student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to do the following:
<ol style="list-style-type: none"> 1. Geography: interpret geographical data, describe the basic physical structure of the planet, and explain the spatial relationships between humans and their environment. 2. Civics: explain structure and purposes of government, describe the foundations of the American political system, explain international relationships, and describe the roles of citizen. 3. Economics: describe fundamental economic concepts, explain decisions made by consumers, businesses, and government; and explain U.S. fiscal policy. 4. History: describe continuity and change, describe the significance of people, places, events, ideas, and documents, and examine relevant experiences from the past to describe contemporary issues.
Approaching Basic
A student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.
Students scoring at this level generally exhibit the ability to do the following:
<ol style="list-style-type: none"> 1. Geography: identify geographical data, recognize the physical structure of the planet, and state the spatial relationships between humans and their environment. 2. Civics: identify the structure and purposes of government, recognize the foundations of the American political system, identify international relationships, and identify the roles of citizen. 3. Economics: identify fundamental economic concepts, identify decisions made by consumers, businesses, and government; and identify U.S. fiscal and monetary policies. 4. History: recognize continuity and change, recognize the significance of people, places, events, ideas, and documents, and identify relevant experiences from the past to describe contemporary issues.
Foundational
A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling but has demonstrated the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level generally exhibit the ability to do the following:

1. Geography: identify limited geographical data, recognize a limited number of physical structures of the planet, and state a limited number of spatial relationships between humans and their environment.
2. Civics: demonstrate limited knowledge about the structure and purposes of government, demonstrate a limited understanding or recognition of the foundations of the American political system, identify a few international relationships, and identify the role of citizens with only some consistency.
3. Economics: demonstrate limited knowledge or understanding of fundamental economic concepts, identify a limited number and type of decisions made by consumers, businesses, and government; and show minimal understanding of U.S. fiscal and monetary policies.
4. History: demonstrate limited recognition of continuity and change, recognize the significance of a limited number of people, places, events, ideas and documents, and identify a limited number of relevant experiences from the past to describe contemporary issues.

Pre-Foundational

A student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling. However, the student may be developing the foundational knowledge and skills that can be built upon to access the grade-level curriculum.

Students scoring at this level need to develop the ability to do the following:

1. Geography: identify geographical data, recognize physical structures of the planet, and state the spatial relationships between humans and their environment.
2. Civics: demonstrate knowledge about the structure and purposes of government, demonstrate an understanding or recognition of the foundations of the American political system, identify international relationships, and identify the role of citizens.
3. Economics: demonstrate knowledge or understanding of fundamental economic concepts, identify types of decisions made by consumers, businesses, and government, and show understanding of U.S. fiscal and monetary policies.
4. History: demonstrate recognition of continuity and change, recognize the significance of people, places, events, ideas, and documents, and identify relevant experiences from the past to describe contemporary issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:274 (February 2007), amended LR 33:

Subchapter E. LAA 2 Assessment Structure

§2021. Content Standards

Editor's Note: This Section has been moved from §2019.

A. The LAA 2 tests measure knowledge and skills deemed necessary for students to become good scholars and productive citizens. This knowledge and these skills are reflected in the content standards that were approved in August 2005 by the SBESE.

B. The LAA 2 is based on academic content standards. Modifications in the test and item format allow students with persistent academic disabilities who are served under the Individuals with Disabilities Education Improvement Act (IDEA) to participate in academic assessments that are sensitive to measuring progress in their learning.

C. The LAA 2 assessments consist of fewer items than LEAP and GEE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F)(3) and R.S. 17:183.1-17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:275 (February 2007), amended LR 33:

§2023. English Language Arts Tests Structure

Editor's Note: This Section has been moved from §2021.

A. The English Language Arts tests have four sessions or subtests.

1. Writing. The Writing session requires students to produce a composition in response to a prompt. The writing session measures key aspects of English Language Arts Standards 2 and 3.

a. Standard 2. Students write competently for a variety of purposes and audiences.

b. Standard 3. Students communicate using standard English grammar, usage, sentence structure, punctuation, capitalization, spelling, and handwriting.

2. Reading and Responding. The Reading and Responding session includes two short reading passages (fiction, nonfiction, no poetry), four multiple-choice and one short-answer item for each passage. Questions in this session measure key aspects of English Language Arts standards 1, 6, and 7.

a. Standard 1. Students read, comprehend, and respond to a range of materials, using a variety of strategies for different purposes.

b. Standard 6. Students read, analyze, and respond to literature as a record of life experiences.

c. Standard 7. Students apply reasoning and problem-solving skills to their reading, writing, speaking, listening, viewing, and visually representing.

3. Using Information Resources. The Using Information Resources session requires students to complete a specified task designed to measure standard 5.

a. Standard 5. Students locate, select, and synthesize information from a variety of texts, media, references, and technological sources to acquire and communicate knowledge. Test items appear next to the resource needed to locate each answer. This session includes five multiple-choice items and 1 short answer item.

4. Proofreading. The Proofreading session requires students to identify mistakes in grammar, usage, and mechanics. The session consists of eight multiple-choice items formatted with a sentence as the stem followed by four answer choices. Questions in this session measure key aspects of English Language Arts standard 3.

a. Standard 3. Students communicate using standard English grammar, usage, sentence structure, punctuation, capitalization, spelling, and handwriting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:275 (February 2007), amended LR 33:

§2025. Mathematics Test Structure

Editor's Note: This Section has been moved from §2023.

A. The Mathematics test consists of three sessions:

1. two multiple-choice sessions; and
2. one constructed-response session.

B. The Mathematics test assesses the following strands:

1. Strand N: Number and Number Relations

a. Standard. In problem-solving investigations, students demonstrate an understanding of the real number system and communicate the relationships within that system using a variety of techniques and tools.

2. Strand A: Algebra
a. Standard. In problem-solving investigations, students demonstrate an understanding of concepts and processes that allows them to analyze, represent, and describe relationships among variable quantities and to apply algebraic methods to real-world situations.

3. Strand M: Measurement
a. Standard. In problem-solving investigations, students demonstrate an understanding of the concepts, processes, and real-life applications of measurement.

4. Strand G: Geometry
a. Standard. In problem-solving investigations, students demonstrate an understanding of geometric concepts and applications involving one-, two-, and three-dimensional geometry, and justify their findings.

5. Strand D: Data Analysis, Probability, and Discrete Math
a. Standard. In problem-solving investigations, students discover trends, formulate conjectures, regarding cause-and-effect relationships, and demonstrate critical-thinking skills in order to make informed decisions.

6. Strand P: Patterns, Relations, and Functions
a. Standard. In problem-solving investigations, students demonstrate an understanding of patterns, relations, and functions that represent and explain real-world situations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:275 (February 2007), amended LR 33:

§2027. Science Tests Structure

Editor's Note: This Section has been moved from §2025.

A. The Science tests consist of two sessions.

1. Session 1 uses a multiple-choice test items for grade 11 to assess concepts and skills in all five strands of science.

2. Session 2 consists of two short-answer questions that assess two of the four science content strands: Physical Science, Life Science, Earth and Space Science, and Science and the Environment. These questions allow students to reflect on an idea, demonstrate their understanding of concepts and processes of science, make meaning of a given set of data, or critique the information. The wording of the questions is direct and specific, and the questions focus on the quality of the students' knowledge.

B. The Science tests assess the following science strands.

1. Strand: Science as Inquiry

a. Standard. Students will do science by engaging in partial and full inquiries that are within their developmental capabilities.

2. Strand: Physical Science

a. Standard. Students will develop an understanding of the characteristics and interrelationships of matter and energy in the physical world.

3. Strand: Life Science

a. Standard. Students will become aware of the characteristics and life cycles of organisms and understand their relationships to each other and to their environment.

4. Strand: Earth and Space Science

a. Standard. Students will develop an understanding of the properties of earth materials, the structure of Earth's system, Earth's history, and Earth's place in the universe.

5. Strand: Science and the Environment

a. Standard. In learning environmental science, students will develop an appreciation of the natural environment, learn the importance of environmental quality, and acquire a sense of stewardship. As consumers and citizens, they will be able to recognize how our personal, professional, and political actions affect the natural world.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:276 (February 2007), amended LR 33:

§2029. Social Studies Tests Structure

Editor's Note: This Section has been moved from §2027.

A. The Social Studies tests consist of two sessions.

1. Session 1 consists of 32 multiple-choice test items for grade 11 that assess knowledge, conceptual understanding, and application of skills in all four social studies strands (i.e., Geography, Civics, Economics, and History). Items in Session 1 are intermingled across strands.

2. Session 2 consists of 2 open-ended questions calling for a constructed response and requiring higher-order thinking in a social studies context (e.g., grasping a concept, analyzing information, evaluating a principle, or applying a skill). Students may be required to construct or interpret a chart, graph, map, timeline, or other graphic representation; to supply a short written answer; or to produce a short writing in response to a social studies issue or problem. Each of the constructed-response items represents one of the four social studies strands. Each task in part B is scored on a 0 to 2 point scale.

B. The four social studies strands assessed are:

1. Strand G—Geography: Physical and Cultural Systems

a. Standard. Students develop a spatial understanding of Earth's surface and the processes that shape it, the connection between people and places, and the relationship between man and his environment.

2. Strand C—Civics: Citizenship and Government

a. Standard. Students develop an understanding of the structure and purposes of government, the foundations of the American democratic system, and the role of the United States in the world while learning about the rights and responsibilities of citizenship.

3. Strand E—Economics: Interdependence and Decision Making

a. Standard. Students develop an understanding of fundamental economic concepts as they apply to the interdependence and decision making of individuals, households, businesses, and governments in the United States and the world.

4. Strand H—History: Time, Continuity, and Change

a. Standard. Students develop a sense of historical time and historical perspective as they study the history of their community, state, nation, and world.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2)

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:276 (February 2007), amended LR 33:

Chapter 35. Assessment of Students in Special Circumstances

§3507. Office of Youth Development

- A. ...
- B. If a student is 18 years of age by March 1, and:
 - 1. is pursuing a high school diploma, he/she shall test; and
 - 2. is not pursuing a high school diploma, he/she does not need to test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:151.3 and R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

- 1. Will the proposed Rule affect the stability of the family? No.
- 2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
- 3. Will the proposed Rule affect the functioning of the family? No.
- 4. Will the proposed Rule affect family earnings and family budget? No.
- 5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
- 6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices

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

The proposed rule consolidates into Bulletin 118 the State Board of Elementary and Secondary Education (SBESE) and the Division of Standards, Assessments, and Accountability (DSAA) test policy rules, guidelines, and procedures for easy access during statewide test administration. The proposed rule change will have no implementation cost to state or local governmental units.

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

There will be no effect on revenue collections at the state or local governmental levels.

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

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition and employment.

Beth Scioneaux
Acting Deputy Superintendent
Management and Finance
0706#010

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 124—Supplemental Educational Services (LAC 28:CXXV.Chapter 1)

Editor's Note: Policy language regarding Supplemental Educational Services is currently contained in Chapter 27 of *Bulletin 111—The Louisiana School, District, and State Accountability System*. The SES policies contained within Bulletin 111 will be repealed upon BESE's final adoption of *Bulletin 124—Supplemental Educational Services*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement *Bulletin 124—Supplemental Educational Services*. Bulletin 124 will be printed in codified format as Title 28, Part CXXXV of the *Louisiana Administrative Code*. Bulletin 124 will be the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Supplemental Educational Services (SES) provisions of the No Child Left Behind Act. This is an update of federal and state policy. Bulletin 124 was developed as a result of the necessity to consolidate all necessary policies and procedures governing the initiative and make it more useful to the state's local school districts and SES providers operating in Louisiana.

**Title 28
EDUCATION**

Part CXXXV. Bulletin 124—Supplemental Educational Services

Chapter 1. Supplemental Educational Services §101. Definition of Supplemental Educational Services

A. Supplemental educational services (SES) are defined by the United States Department of Education as "tutoring or extra help provided to students in reading, language arts/English, and math. This extra help can be provided before or after school, on weekends, or in the summer." The No Child Left Behind Act states that these services must be of high quality, research-based, and specifically designed to increase the academic achievement of eligible children.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§103. Supplemental Educational Services Model

A. Louisiana's recommended model for the provision of effective supplemental educational services has three components:

1. assessment, or an appropriate process, to identify student weaknesses and achievement gaps that will be used to design instruction as well as to measure gains in student achievement for the purposes of provider accountability;

2. targeted remediation/instruction aimed at addressing the individual skill gaps revealed during the assessment and based upon an individual learning plan; and

3. post assessment to see if student gains occurred and a plan for either re-teaching skills or identifying new skill sets for instruction.

B. Student instruction will be in the areas of reading, English/language arts, and/or mathematics in order to help students achieve academic proficiency and should be based on Louisiana's academic content standards and the local district's instructional plan.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§105. Supplemental Educational Service Providers

A. Providers that meet the criteria specified by the Louisiana State Department of Education shall be included on the state-approved supplemental educational services provider list. The State Department of Education will post the list, beginning January 1, 2003. The provider list will be updated on a periodic basis, at least annually, as new providers are identified and meet the qualifications.

B. To be included on the approved list of supplemental educational service providers, applicants shall have met the following criteria as determined through the application process outlined in Subsections E and F:

1. be able to define a process for assessment that results in an individual instructional plan tied to content standards;

2. have a demonstrated level of effectiveness in increasing student academic achievement;

3. be capable of providing supplemental educational services that are of high-quality, research-based, and consistent with the instructional program of the local educational agency and the state's academic content standards;

4. provide instruction that is secular, neutral, and non-ideological;

5. be financially sound, use qualified staff, and possess the organizational capacity necessary to deliver the contracted services;

6. meet all applicable federal, state, and local health, safety, and civil rights laws; and

7. have a program accessible to students attending Title I schools in school improvement.

C. Providers may be nonprofit entities, for-profit entities, and local education agencies, including public and private schools, after-school centers, cooperative educational service agencies, institutions of higher education, and faith-based organizations.

D. Entities that are not eligible to serve as providers include public schools identified for school improvement, restructuring or corrective action; and Local Education Agencies identified for school improvement (although schools within such an LEA that are making adequate yearly progress can be providers).

E. Provider Application Requirements

1. Each application for approval to provide SES in Louisiana shall consist of the components described below:

a. a summary of proposed services that indicates:

i. the subject areas proposed (i.e., reading and/or mathematics);

ii. the grade levels to be served;

iii. the total program hours per student to be provided;

iv. the proposed locations of service delivery;

v. the minimum number of students required by the eligible applicant in order to offer SES to a district and the maximum number, if any, for each proposed district;

vi. whether the eligible applicant can provide services to students of limited English proficiency and, if so, the languages in which the eligible applicant provides instruction and the maximum number of LEP students the eligible applicant can serve in each district;

vii. whether the eligible applicant can provide services to students with disabilities and, if so, the accommodations or modifications the applicant can offer and the maximum number of students with disabilities the applicant can serve in each district;

viii. the cost of instruction per hour per student, as proposed by the provider;

ix. the ratio of instructors to children, as determined by the provider; and

x. the specific districts and schools the eligible applicant seeks to serve;

b. a rationale for the eligible applicant's SES program, including:

i. evidence of effectiveness under the following two categories:

(a) demonstrated evidence of effectiveness:

(i). evidence that the program proposed in the application has had a positive impact on students' achievement in reading and/or math for three years or more, particularly for low-income, underachieving students, as demonstrated by scores on state, district, and/or another independent, valid and reliable assessment or on a nationally recognized assessment; and

(ii). at least five but no more than 10 letters of reference from previous clients (families, districts, or teachers) offering testimonial information on the positive impact of the program proposed in the application and including contact information, starting and ending dates of service provided, and school and district names for each reference;

(b). new and emerging evidence of effectiveness:

(i). evidence that the eligible applicant has a minimum of one year's experience serving youth in the community where the eligible applicant intends to offer SES through activities such as tutoring or targeted academic intervention;

(ii). evidence that the program proposed by the applicant provides a diagnostic/prescriptive process to

have a positive impact on students' achievement in reading and/or math, particularly for low-income, underachieving students, including an explanation of data collection strategies to show future evidence of effectiveness; and

(iii) an agreement to serve no more than 200 children statewide during the first two years of SES. This limitation may be waived only through BESE approval;

c. the specific procedures to be used and frequency of reports of student progress to teachers, district staff, and parents/families (including a description of how information will be provided to parents and families in a format and language they can understand);

d. a description of the qualifications of instructional staff, including such resumes and other information on qualifications as the SDE may require;

e. proof of liability insurance in amounts deemed sufficient by the SDE;

f. evidence that the eligible applicant possesses a sound management structure;

g. evidence that the applicant has adequate financial, organizational and technical resources to administer the proposed program;

h. proof of legal authority to conduct business in Louisiana;

i. disclosure of the intended use of incentives or gratuities with the estimated cost of such items;

j. such certifications, assurances, and/or additional information as the SDE may require to fulfill its duties with respect to the administration of SES.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§107. State Educational Agency Role and Responsibilities

A. The SDE shall identify providers, maintain a list of providers, and monitor services. Specifically, the SDE shall:

1. consult with parents, teachers, LEAS, and interested members of the public to identify a large number of supplemental educational service providers;

2. provide and disseminate broadly an annual notice to potential providers the process for obtaining approval to be a provider of supplemental educational services:

a. SBESE, annually, shall provide notice of the opportunity for eligible entities to apply for the provision of SES in Louisiana. SBESE may also issue an annual notice to potential applicants of supplemental educational services on behalf of only districts that are deemed to not have an adequate number of available providers of SES;

b. each application will be read and scored by a panel of trained reviewers;

c. if an application is rejected, the applicant shall be eligible to re-apply only once during the following 12-month period;

d. if a provider is removed from the state-approved list, it shall be ineligible to re-apply during the following two-year period, unless it is a public school district that may have its eligibility restored by being removed from "improvement status";

e. an approved SES provider wishing to alter any portion of its state-approved application, including, but not limited to, proposed contact hours, curriculum changes, or program methodology, must seek and receive approval from

the SDE prior to making any change. Failure to do so may result in provider removal from the state-approved list;

3. develop and apply objective criteria for approving potential providers;

4. maintain an updated list of approved providers;

5. develop, implement, and publicly report on techniques for monitoring the quality and effectiveness of services offered by approved supplemental services providers;

6. establish a range of acceptable pricing terms and limitations for SES services. SES providers must request and receive approval of any rate changes from the SDE, so not to exceed a district's per pupil allocation under Part A of Title I of NCLB.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§109. Local Educational Agency Role and Responsibilities

A. Local educational agencies (LEAs) with schools in their second year of school improvement shall:

1. identify eligible students;

2. notify parents about the availability of services and the process for obtaining supplemental educational services for their child(ren) in an understandable and uniform format. This includes:

a. the identity of approved providers whose services are in the school district or within a reasonable proximity of the district;

3. help parents choose a provider, if such help is requested;

4. determine which students should receive services when all students cannot be served;

5. enter into an agreement with a provider selected by parents of an eligible student;

6. assist the State Educational Agency (SEA) in identifying potential providers within the LEA;

7. provide quality information to the SEA so that it can monitor the quality and effectiveness of the services offered by providers;

8. offer the opportunity for supplemental services until the school in question is no longer identified for school improvement according to the requirements of the No Child Left Behind Act. Further, the Board of Elementary and Secondary Education, for the purposes of supplemental educational services, defines "school year" as inclusive of the summer months and strongly encourages LEAs to offer services to eligible students during this timeframes;

9. protect the privacy rights of students who receive supplemental educational services.

B. Local educational agencies shall be required to use the SDE's web-based reporting system to manage student enrollment and to monitor student attendance and progress.

C. Districts shall submit quarterly programmatic and fiscal reports to LDE no later than 30 days after the end of each quarter. The report shall include:

1. information on each student served during the quarter by provider; including test, demographic, and attendance data;

2. details of any complaints received from parents or SES providers;

3. summary of any announced or unannounced monitoring visits to SES provider sites conducted during quarter;

4. any updates or revisions to information submitted to the LDE regarding SES implementation (i.e., timelines, additional schools, changes in Title I per pupil allocation, etc.); and

5. information on the quarterly fiscal expenditures of Title I funds for SES, indicating the payments made by the district to each provider for the reporting period. If a student's services are terminated during the SES reporting period, the costs should be reported in accordance with the percentage of the program completed prior to termination of services.

D. Districts failing to submit timely and complete reports shall be cited for non-compliance and requested to submit a corrective action plan. Upon receipt of such notice of non-compliance, districts shall have 30 days to submit a corrective action plan, addressing all cited issues of non-compliance.

E. Each district required to offer supplemental educational services shall maintain documentation relating to the provision of SES for state and federal monitoring and evaluation purposes. Districts should make the following information, at minimum, available for state, federal, or third-party evaluator review:

1. annual notice for SES, including how parents can access services; a listing of approved providers; brief description of provider services, qualifications, and demonstrated effectiveness of the providers;

2. description of LEA procedures for determining eligibility of students;

3. description of LEA process for prioritizing availability of services if demand is greater than available allocation;

4. copies of the district's contracts with SES providers.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§111. Optional LEA Responsibilities

A. Assist the State Department of Education in identifying potential providers within the school district.

B. Determine which are the lowest-achieving students who can receive services, if the demand for services exceeds available supply.

C. Provide information to the State Department of Education to assist with monitoring the quality and effectiveness of the services offered.

D. Provide Transportation to Eligible Students. Although the Board of Elementary and Secondary Education is aware that LEAs are not required by law to provide such services, it strongly encourages LEAs to provide transportation to eligible students in order to maximize their access and opportunities to improve academic achievement.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§113. SES Agreement between Provider and LEA

A. Each local education agency shall enter into an agreement with the SES provider selected by parents of eligible students. The agreements shall contain, at minimum:

1. a description of the research-based program to be utilized;

2. the location and amount of time of instructional service;

3. specific achievement goals;

4. a timetable for improving achievement;

5. methods for measuring and reporting progress;

6. how parents/guardians and teacher will be regularly informed of progress;

7. procedures the LEA will use to pay the provider;

8. confidentiality of student identities;

9. conditions for the termination of the agreement, including attendance regulations and requirements, and appeal procedures.

B. SES providers may be contacted by districts to provide the approved services at the initial pricing terms approved at the state level.

C. Before providing supplemental educational services in a district, a provider must have a signed contract with the LEA.

D. The LEA may impose reasonable administrative and operational requirements through its agreements with providers that are consistent with requirements set by the SDE and that do not limit educational options for parents/guardians.

E. The LEA may terminate the services a provider is providing to an individual student if the provider fails to meet specific achievement goals within the established timetable set in the agreement between the provider and the LEA.

F. The LEA shall provide the SDE with written notification indicating its intent to terminate the services of a provider. If applicable, the provider may invoke the appeals process as outlined in §2717.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§115. SES Provider Responsibilities

A. All approved SES providers shall abide by a code of ethics consisting of the following requirements.

1. Providers shall describe services as approved in state application to consumers in terms that are easy to understand and jargon-free.

2. Providers shall submit a sample of SES program promotional materials and advertisements, (such as brochures, flyers, and posters) to the school district(s) in which they wish to serve and/or the SDE, upon request.

3. Providers shall not misrepresent to anyone the location of a provider's program or its approval status.

4. Providers shall not compensate district employees in exchange for access to facilities or to obtain student lists. School personnel may be hired for instructional purposes only.

5. Providers shall fully disclose the intended provision of economic incentives or gratuities of any kind during the state application process.

6. Providers shall not encourage or induce students or parents to switch providers once students have been enrolled into another program.

7. Providers shall not enroll students in an SES program without prior authorization from the district.

8. For students under 13, providers proposing to utilize web-based instruction must obtain parental permission before communicating with students via e-mail or the Internet as per Title XIII—Children's Online Privacy Protection Act of 1998.

B. Providers shall be required to utilize the SDE's web-based information system for student enrollment and invoicing the districts for payment.

C. An approved provider shall report annually to the SDE and each district served. The report shall include the following information: number of students served, pre- and post-test data, attendance, percentage of students meeting the academic goals set forth in Individual Learning Plans, details of any complaints received from teachers or parents; and an updated assurance that all information within the provider's approved application remains true and correct.

D. Providers shall maintain records, including data stored in information system, for a period of five years. Documentation shall be made available, upon request by the SDE, for monitoring reviews or audit purposes.

E. Providers shall cooperate with any assessments or evaluations conducted by the SDE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§117. State Approval and Sanctions of SES Providers

A. This list of available SES providers shall be approved by SBESE annually.

B. The SDE shall make annual recommendations to SBESE on a provider's performance category, based on a combination of a provider's overall program compliance and student achievement gains.

C. One of the following performance categories shall be recommended for each SES provider.

Performance Category	Description
Approved	The provider has met compliance requirements and has demonstrated positive achievement effects. The provider is approved without reservation to continue services in the following year.
Satisfactory	The provider has met compliance requirements. There may be insufficient data available regarding achievement effects. It may also have only New and Emerging evidence of effectiveness, requiring a limit on total number of students served, but still meets compliance requirements.
Probation I	The provider has minor compliance violations and/or has not demonstrated positive achievement effects. The provider may also have weak or negative implementation outcomes.
Probation II	The provider has compliance violations and/or has not demonstrated positive achievement effects. The provider also may have been in Probation I status the prior year and failed to improve implementation outcomes.
Removal	The provider has serious compliance violations or the provider may have been in Probation II status last year and failed to improve implementation outcomes. The provider also may have been in Probation II status and failed to produce positive achievement effects.

D. If necessary, the provider shall, within 30 days after category designation, submit to the SDE for approval a corrective action plan detailing how the provider intends to improve the deficiencies in its program. If the provider does not undertake all actions set forth in an approved corrective

action plan during the following SES reporting period, the provider may be removed from the list of state-approved providers.

E. The SDE may also require corrective action of a provider if compliance issues are raised through the monitoring of a provider's program. Providers placed in corrective action shall, within 30 days after receiving notice, submit to the SDE a corrective action plan detailing how the provider intends to improve the deficiencies in its program. A provider may be removed from the state-approved list if it fails to meet the requirements of its corrective action plan by the end of the SES reporting period.

F. SBESE may immediately suspend a provider's services if it commits a felony or misdemeanor; has substantial non-compliance; or if an LEA or the SDE determines that a threat exists to the health or safety of students.

G. The SBESE may remove a provider from the state-approved list upon 30 days' written notice if the provider has engaged in illegal or deceptive practice, violated any assurance or aspect of its application to SDE, falsified any information on its application or other reports to SDE, or otherwise violated state or federal law.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§119. SES Appeal Process—LEA

A. The rules and regulations contained in this Subpart are in accordance with the Louisiana Administrative Procedures Act, Revised Statutes 49:950 et seq., 7 CFR Part 226.6(k), and shall govern the implementation of appeals procedures for SES providers by local educational agencies and the SDE.

B. A provider may appeal the termination of services at the LEA level by submitting an appeal to the LEA specifying the basis upon which it believes its removal is not in accordance with applicable law.

C. The LEA shall notify the provider, in event of service termination at the district level, of the action being taken through a "Notice of Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the provider;
2. the specific amount of fiscal sanction assessed against the provider, if any;
3. a statement specifying what action the provider must take to correct the violation(s), if applicable;
4. a statement of the time lines related to the proposed action;
5. a statement as the consequences for failing to timely take corrective actions or make a request for appeal;
6. a statement of the provider's right to appeal the proposed action;
7. the name, address and telephone number of the hearing officer. A third-party official must be designated by the LEA to review appeals. This information must be submitted to SDE annually for review.

D. A notice of proposed action terminating a provider's SES participation shall be sent by the LEA to the provider's executive director, the chair of the board of directors, identified responsible principals and responsible individuals. A copy of the notice shall also be sent to the SDE.

E. If the proposed termination of services is due to the provider's submission of a false or fraudulent documentation, the notice of proposed action shall also state:

1. that the effective termination or removal date shall be 10 days after the provider's receipt of the notice;

2. the provider's written request for an appeal must be received by the hearing officer within 10 days of the provider's receipt of the notice of proposed action along with written documentation opposing the proposed removal.

F. The service of a Notice of Proposed Action, Request for Appeal and Decision shall be made by official U.S. postal certified mail, return receipt requested:

1. service upon a provider's authorized representative, officer, or agent constitutes service upon that entity;

2. service by certified mail is complete upon the date of receipt. An official U.S. postal receipt from the certified mailing constitutes prima facie evidence of service. If the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§121. SES Provider Request for Appeal

A. Providers wishing to appeal proposed actions shall serve a written request for appeal upon the LEA not later than 15 calendar days after the receipt of the notice of proposed action.

B. The request for appeal shall contain the following information:

1. a listing of what specific violations set forth in the notice of proposed action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;

2. a statement specifying which of the following two forms of appeal a provider seeks:

a. a review of the records with the right to submit additional written information to dispute the proposed action; or

b. a hearing. Appeals shall be conducted by a fair and impartial hearing officer. The provider may be represented by legal counsel or another designated individual;

c. a statement as to the relief or remedy the provider seeks from the appeal.

C. The LEA must acknowledge receipt of the request for appeal within 10 calendar days of its receipt of the request.

D. Providers wishing to have a review of the LEA's proposed termination from SES participation must submit a written request for a review directly to the SDE at the same time.

E. In the case of a review, the LEA must render a decision to the provider within 60 days from the date of the receipt of the request for appeal by the provider. In the case of a hearing, due process procedures as developed and utilized by the LEA should ensue. Final determinations, in either case, shall be sent to the SDE within 30 days of rendering.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§123. SES Appeal Process—State

A. The rules and regulations contained in this Subpart are in accordance with the Louisiana Administrative Procedures Act, Revised Statutes 49:950 et seq., 7 CFR Part 226.6(k), and shall govern the implementation of appeals procedures for SES providers by local educational agencies and the SDE.

B. A provider may appeal its removal from the state-approved list by SBESE by submitting an appeal to the SDE specifying the basis upon which it believes its removal is not in accordance with applicable law.

C. The SDE shall notify the provider, in event of removal from the state-approved list, of the action being taken through a "Notice of Proposed Action." This notice shall contain the following information:

1. a list of specific violations of program rules and regulations alleged to have been committed by the provider;

2. the specific amount of fiscal sanction assessed against the provider, if any;

3. a statement specifying what action the provider must take to correct the violation(s), if applicable;

4. a statement of the time lines related to the proposed action;

5. a statement as to the consequences for failing to timely take corrective actions or make a request for appeal;

6. a statement of the provider's right to appeal the proposed action;

7. the name, address and telephone number of the hearing officer.

D. A notice of proposed action terminating a provider's SES participation shall be sent by the SDE to the provider's executive director, the chair of the board of directors, identified responsible principals and responsible individuals.

E. If the proposed termination of services is due to the provider's submission of a false or fraudulent documentation, the notice of proposed action shall also state:

1. that the effective termination or removal date shall be 10 days after the provider's receipt of the notice;

2. the provider's written request for an appeal must be received by the hearing officer within 10 days of the provider's receipt of the notice of proposed action along with written documentation opposing the proposed removal.

F. The service of a Notice of Proposed Action, Request for Appeal and Decision shall be made by official U.S. postal certified mail, return receipt requested:

1. service upon a provider's authorized representative, officer, or agent constitutes service upon that entity;

2. service by certified mail is complete upon the date of receipt. An official U.S. postal receipt from the certified mailing constitutes prima facie evidence of service. If the last day of any deadline established by these rules falls on a weekend or a state holiday, service is considered timely made if received on or before the close of business of the next business day.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§125. SES Provider Request for Appeal

A. Providers wishing to appeal proposed actions shall serve a written request for appeal upon the SDE not later than 15 calendar days after the receipt of the notice of proposed action.

B. The request for appeal shall contain the following information:

1. a listing of what specific violations set forth in the notice of proposed action are being appealed together with a short and plain statement of each contested issue of fact or law concerning each violation;

2. a statement specifying which of the following two forms of appeal a provider seeks:

a. a review of the records with the right to submit additional written information to dispute the proposed action; or

b. a hearing. Appeals shall be conducted by a fair and impartial hearing officer. The provider may be represented by legal counsel or another designated individual;

c. a statement as to the relief or remedy the provider seeks from the appeal.

C. The SDE must acknowledge receipt of the request for appeal within 10 calendar days of its receipt of the request.

D. Providers wishing to have a review of the SDE's proposed termination from SES participation must submit a written request for a review directly to the hearing officer at the same time.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§127. SES Provider Appeals on the Record; Submissions

A. Providers and responsible principals and responsible individuals opting to appeal proposed actions by a review of the record shall submit all documents and information, in written form, that they wish to have considered in the appeal to the hearing officer not later than 30 calendar days after the receipt of the notice of proposed action.

B. The SDE shall submit all documents and written information it wishes to have considered to the hearing officer not later than 30 calendar days after the institution's receipt of the notice of proposed action.

C. Any information on which SDE action was based must be available to the provider and the responsible principals and individuals for inspection from the date of the state agency's receipt of the request for appeal.

D. The hearing officer must conduct a hearing in addition to, or in lieu of, a review of the record only if the provider or the responsible principals and responsible individuals request a hearing in the written request for appeal.

E. The hearing officer must immediately notify the SDE that a provider has contested the proposed removal.

1. The SDE must immediately submit to the hearing officer a copy of the notice of proposed action terminating the provider's participation and all supporting documents.

F. If a hearing is requested in writing, the hearing officer shall schedule the hearing date to allow rendering of the decision within 60 days from the date of the receipt of the request for appeal by the state agency. The hearing officer shall notify the provider and SDE in writing of the time, date, and place of the hearing, at least 10 calendar days in advance of the date of the hearing.

1. An SDE representative must be allowed to attend the hearing to respond to the testimony of the provider and to answer questions posed by the hearing officer.

2. The notice of proposed action issued to the provider shall remain in effect until the decision is rendered in the appeal.

3. The hearing officer shall render a decision which shall include findings of fact, conclusions, and a statement as to the reasons for the decision. The decision shall be rendered within 60 days of the receipt of the request for appeal by the SDE. The decision shall be served to the provider and the SDE by the hearing officer and shall constitute the final SDE action for purposes of judicial or other review. The decision of the hearing officer can be appealed as provided by law.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

Family Impact Statement

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 124—Supplemental
Educational Services**

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

There is no estimated cost (savings) to state or local governmental units. The rule is repealing the Supplemental Educational Services policies in Bulletin 111. Bulletin 124 will contain the new policies for Supplemental Educational Services, updating Federal and State policy.

The estimated cost for printing this policy change and first page of the fiscal and economic impact statement in the

Louisiana Register is approximately \$136.00. Funds are currently budgeted for this purpose.

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

There will be no estimated effect on revenue collection of state or local governmental units.

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

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Acting Deputy Superintendent
Management and Finance
0706#068

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV. Chapter 23)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2319, High School Graduation Requirements, §2373, Agricultural Education; §2377, General Career and Technical Education, and §2381, Health Occupations. This action is being proposed to update career and technical course offerings. In updating these courses offerings the career and technical program of studies will be more aligned with national standards.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2319. High School Graduation Requirements

A. - E. ...

F. High School Area of Concentration

1. - 1.a. ...

b. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. Areas of Concentration are identified in the Career Options Reporting System with each LEA designating the Career and Technical Education Areas of Concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each

Course	Credit
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2, 1
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1-3 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1
Digital Media I, II	1-3
Computer Service Technology I & II	2-3
Networking Basics	2-3
Routers and Routing Basics	2-3
Switching Basics & Intermediate Routing	2-3
WAN Technologies	2-3
Web Design II	1

G. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R. S. 17:183.2; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:

§2373. Agricultural Education

A. ...

B. Agriscience III and IV Laboratory, and Cooperative Agriscience Education I and II are offered only to students who are also enrolled in Agriscience III or Agriscience IV for two consecutive semester courses during the year.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1298 (June 2005), amended LR 33:277 (February 2007), LR 33:

§2377. General Career and Technical Education

A. General Career and Technical Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
CTE Internship I	11-12	1
CTE Internship II	12	1
CTE Internship I	11-12	2
CTE Internship II	12	2
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2 -1
Teacher Cadet I	11-12	1
Teacher Cadet II	12	1
Advanced Television Broadcasting I	10-12	1-3
Advanced Television Broadcasting II	11-12	1-3
Digital Media I	10-12	1-3
Digital Media II	11-12	1-3
Oracle Internet Academy		

Course Title(s)	Recommended Grade Level	Units
Database Design and Programming	11-12	1
Java Programming	11-12	1
Database Programming with PL/SQL	11-12	1
Finance Academy		
Economics and the World of Finance	11-12	1/2
Banking and Credit	11-12	1/2
Financial Planning	11-12	1/2
Securities	11-12	1/2
Insurance	11-12	1/2
International Finance	11-12	1/2
Introduction to Financial Services	11-12	1/2 - 1
Hospitality and Tourism Academy		
Introduction to Travel and Tourism	11-12	1/2
Travel and Tourism II	11-12	1/2
Travel Geography	11-12	1/2
Systems Applications	11-12	1/2
Economics for Travel and Tourism	11-12	1/2
Information Technology Academy		
Introduction to Information Technology	11-12	1/2
Digital Networks	11-12	1/2
Advanced Web Tools	11-12	1/2
Databases	11-12	1/2
Introduction to the Internet	11-12	1/2
Logic for Programming	11-12	1/2

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 32:546 (April 2006), LR 32:1415 (August 2006) LR 33:278 (February 2007), LR 33:

§2381. Health Occupations

A. Health Occupations course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
AHEC of a Summer Career Exploration	9-12	1/2
Allied Health Services I	10-12	1-2
Allied Health Services II	10-12	1-2
Cooperative Health Occupations	11-12	3
Dental Assistant I	10-12	1-2
Dental Assistant II	11-12	2-3
Emergency Medical Technician—Basic	10-12	2
First Responder	9-12	1/2-2
Health Occupations Elective I, II	9-12	1/2-3
Health Science I	11-12	1-2
Health Science II	12	1-2
Introduction to Emergency Medical Technology	10-12	2
Introduction to Health Occupations	9-12	1
Introduction to Pharmacy Assistant	10-12	1
Medical Assistant I	10-12	1-2
Medical Assistant II	11-12	1-2
Medical Assistant III	12	1-2
Medical Terminology	9-12	1
Nurse Assistant	10-12	2-3
Pharmacy Technician	12	1-2
Sports Medicine I	10-12	1/2
Sports Medicine II	11-12	1/2
Sports Medicine III	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

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

The proposed revision will change Career and Technical course offerings. It is estimated that there will be no additional costs to state governmental units. It is unknown at this time if there are any costs to local governmental units. The LEA may choose to offer new courses to students that may require updating course offerings or other counseling brochures. LEAs choosing to offer the new courses may need to purchase items such as new textbooks, instructional materials or equipment. Each LEA will make its determination.

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

There will be no effect on revenue collections by state/local governmental units.

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

The proposed changes are being requested to bring current Career and Technical course offerings in-line with industry demands. In aligning our course offerings with national standards, it will strengthen the link between secondary and postsecondary institutions. It will assist Career and Technical students in attaining vocational skills for the workplace.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

Employers could have a larger, trained and qualified pool from which to select employees.

Beth Scioneaux
Acting Deputy Superintendent
Management and Finance
0706#011

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administration—Distance Education
(LAC 28: CXV.2395)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2395. Distance Education. Distance education provides instruction to individual learners who are separated from their teachers by space and/or time and multiple appropriate learning pathways for diverse learners. Web-based instruction, compressed and IP videoconferencing instruction, satellite-delivered, and web-supported instruction have expanded the walls of the traditional school. Emerging technologies continue to provide new distance learning opportunities that include interactive and authentic learning experiences and enhance collaboration between teacher and learner—in effect, creating virtual classrooms. Therefore, it is necessary to correlate and make recommended changes to the current set of distance learning standards.

Title 28

EDUCATION

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 23. Curriculum and Instruction

§2395. Distance Education

A. An LEA choosing to implement a distance education program shall establish policy and procedures for reviewing and approving programs that meet the following standards for distance education as established by BESE.

1. Local distance education programs shall support the *State Content Standards Initiatives*.

a. Distance education programs shall support the mission of the standards-based initiatives, i.e., "to develop rigorous and challenging standards that will enable all Louisiana students to become lifelong learners and productive citizens for the 21st century."

b. Distance education courses shall incorporate the foundation skills of the *State Content Standards* (Communication, Problem Solving, Resource Access and Utilization, Linking and Generating Knowledge, and Citizenship).

2. Distance education shall comply with all policies set forth by BESE as stated in current *Bulletin 741—Louisiana Handbook for School Administrators* with the exception of §907, Secondary—Class Times and Carnegie Credit.

a. Students can earn Carnegie credit by successfully completing all course requirements for distance education courses authorized by the LEA according to the policies in this Section.

3. The receiving LEA or school and the provider shall meet the following requirements related to the development of a standards-based distance education program. A receiving LEA or school is defined as any LEA or school that has students enrolled in courses via distance education. A provider could be an LEA, school, agency or educational organization.

a. The receiving LEA shall authorize each distance education course and ensure that the rigor and breadth meets state curriculum content standards.

b. The receiving LEA shall ensure that instruction is provided by teachers certified in the course/subject in which they are teaching with training in the delivery method, including appropriate media and pedagogy.

c. The receiving LEA shall verify that college and university advanced placement and/or college dual enrollment course instructional staff not holding Louisiana state teacher credentials are validated as subject matter experts by the providing institution.

d. The receiving LEA or school shall ensure that all students enrolled in a distance learning course are provided with the necessary course materials and technical support.

e. The receiving LEA shall evaluate the effectiveness of each authorized distance education course based on course completion rates and student achievement.

f. The provider shall define minimum prerequisite technology competencies for student participation in distance education courses if such competencies are required for course access.

g. The provider shall also make available to the student an orientation to the course delivery method prior to or at the start of the course.

h. The provider shall ensure that teachers delivering instruction in distance education courses use a variety of methods to assess the mastery of the content as reflected in the *Louisiana Content Standards*.

i. The provider shall provide to the receiving LEA a complete syllabus and a list of required materials prior to course implementation.

j. The provider shall ensure that all course content complies with copyright fair use laws, including The Technology, Education, and Copyright Harmonization Act (TEACH Act).

k. Online Course providers shall ensure access to the courses' web content by using non-proprietary technologies (HTML).

l. LEAs and course providers shall make courses available to all students by complying with web accessibility guidelines and standards (W3C, Section 508, and Louisiana and institutional guidelines) to the maximum extent reasonably possible.

m. The provider shall supply course content that is designed to meet the following criteria:

i. based on current perspectives of learning theories and curriculum standards;

ii. systematic in design, clearly written and revised based on student performance and feedback;

- iii. uses appropriate presentation methods, media and pedagogy;
- iv. engages students in a variety of learning activities based on various learning styles;
- v. accommodates individual differences, including student disabilities; and
- vi. encourages student-to-teacher and student-to-student interaction.

4. The receiving LEA or school and the provider shall meet the following requirements for management and administration.

a. The receiving LEA shall award credit and grades for distanced education courses assigned by the distance education provider and instructor with no deviations.

b. The receiving LEA or school shall ensure that a facilitator who is a Louisiana licensed teacher is assigned to and is actively engaged with each student participating in distance education courses.

c. The receiving LEA or school shall ensure that the facilitator adheres to guidelines determined by the provider and the policies in this Section.

d. The receiving LEA or school shall provide adequate, timely, and appropriate technical support to students, teachers, and facilitators.

e. The receiving LEA shall ensure that the facilitators are provided ongoing staff development appropriate to the delivery method used, supporting distance education courses technically and instructionally.

f. The receiving LEA shall ensure that students have appropriate, equitable, and adequate access for course participation.

g. In the event of short- and long-term interruptions, the LEA shall establish an alternative method of instruction in cooperation with the provider.

h. The provider shall judiciously address issues relative to course load and student-teacher ratio as appropriate for the particular method of delivery, course content, and teacher competency to ensure effective student interaction and course management.

i. Students will be enrolled, added, and dropped as outlined in the LEA's Pupil Progression Plan.

j. The provider shall ensure that the teacher providing instruction is provided adequate technical support to ensure ease of use for faculty and students.

k. The provider shall furnish training and/or support in designing course content to fit the delivery methods proposed for distance education courses.

l. The teacher delivering instruction and the facilitator, through ongoing communication, shall be responsible for verifying student participation and performance.

m. The teacher delivering instruction shall provide alternate course procedures and activities for use in case of technical and other course delivery problems arise that prevent normal course delivery.

n. The teacher delivering instruction shall an atmosphere conducive to optimal learning including but not limited to monitoring online discussions and other instructional activities.

o. The teacher delivering instruction shall practice ethical and legal use of equipment and instructional resources.

p. The facilitator shall practice ethical and legal use of equipment and instructional resources.

q. The teacher delivering instruction and the facilitator through ongoing communication shall be responsible for verifying student participation and performance.

r. The facilitator shall implement alternate course procedures when technical and other course delivery problems prevent normal course delivery.

s. The facilitator shall maintain an atmosphere conducive to optimal learning, including but not limited to monitoring online discussions and other instructional activities as they occur in the classroom as directed by the teacher delivering instruction.

5. The following technical specifications are required.

a. The receiving LEA shall provide students enrolled in distance education courses technical access which meets specifications furnished by the course provider.

b. The receiving LEA shall provide instructional and communication hardware which meets specifications furnished by the course provider.

c. The receiving LEA shall fund and provide timely and appropriate technical support.

d. The provider will furnish course technical requirements sufficiently in advance so districts may make informed decisions about participation.

e. Course providers will ensure they have the appropriate technical infrastructure to support their course offerings for effective course delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1302 (June 2005), amended LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 741—Louisiana Handbook for
School Administration—Distance Education**

Title 28

EDUCATION

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

**Chapter 11. State and Federal Guidelines Related to
No Child Left Behind Federal
Legislation: Qualifications for Teachers
And Paraprofessionals**

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

The Louisiana Statewide Distance Learning Task Force convened in the fall of 2006 to update the State Standards for Distance Education as a result of new and emerging distance learning technologies. Prior to 1999 most Distance learning courses were offered via satellite. The standards needed to be updated to reflect the emerging technologies in online web-based instruction that have transpired since the last standards that were approved in 1999 and because satellite course offerings are being phased out.

The adoption of this policy will cost the Department of Education approximately \$136 (printing) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
Management and Finance
0706#037

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State
Certification of School Personnel
(LAC 28:CXXXI.Chapters 11, 12, 13, and 14)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, Chapters 11 through 14. This change in Bulletin 746 will incorporate Appendices B-D and the Glossary into the codified document as Chapters 11-14, as follows: Chapter 11, State and Federal Guidelines Related to No Child Left Behind Federal Legislation: Qualifications for Teacher and Paraprofessional; Chapter 12, Approved Courses to Reinstate a Lapsed Certificate; Chapter 13, Ancillary Certification; and Chapter 14, Glossary.

§1101. General Provisions

A. The No Child Left Behind (NCLB) Act of 2001 requires that those involved with delivering instruction of core content areas in K-12 schools be highly qualified. This chapter is divided into four sections: Board of Elementary and Secondary Education (BESE) policy regarding:

1. highly qualified status for teachers;
2. highly qualified status for paraprofessionals; and
3. continuing learning units (CLUs); and
4. federal legislation related to qualifications of teachers and paraprofessionals.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1103. Highly Qualified Policy for Teachers

A. The requirement that teachers be highly qualified applies to any public elementary, middle, or secondary school teacher. The Louisiana Department of Education (LDE) is the state agency/entity responsible for prescribing qualifications and providing for the certification of teachers under authority of R.S. 17:7.1.

B. The Louisiana Department of Education collaborated with the Board of Elementary and Secondary Education and the Board of Regents on state activities under the No Child Left Behind (NCLB) Act of 2001 related to "highly qualified teachers." All teachers hired on or after the first day of the 2002-2003 school year to work in programs supported by Title I funds and who teach core academic subjects must be highly qualified. Under NCLB, all teachers of core academic subjects must have met highly qualified status by the end of the 2005-2006 school year.

C. Statutory Requirements for Certification. To obtain initial Louisiana certification, an individual must hold at least a baccalaureate degree, have earned a minimum grade point average of a cumulative 2.50, and have demonstrated subject knowledge and teaching skills in the certification area by passing rigorous exams required in Louisiana.

D. Academic Major. In Louisiana, for the purpose of NCLB, teachers who completed an academic content major are highly qualified in that content area.

E. Advanced Certification. For the purpose of NCLB, Advanced Certification is defined as having a master's degree or higher degree in the content area. Teachers who have highly qualified status under this option must meet all applicable state laws.

F. **Advanced Credentialing.** Advanced Credentialing is defined as successful completion of a rigorous credentialing process that is based on a high objective uniform standard. The National Board of Professional Teaching Standards uses a process for certifying its candidates that meets this standard.

G. **Applicability.** The requirement that teachers be highly qualified applies to all public elementary and secondary school teachers assigned to core academic subjects. Special education teachers providing instruction in core academic areas, including those who teach students identified as academically gifted, must also meet highly qualified requirements.

H. **Core Academic Subjects.** As defined in the mandate, core academic subjects are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. Louisiana defined "arts as a core academic subject" to include all secondary visual and performing arts courses for which Carnegie units (high school credits) are awarded.

I. Standard Teaching Certificates

1. Louisiana issues standard teaching certificates to persons who have completed a state-approved teacher education program (traditional or alternate approach) and who earned a degree from a regionally accredited institution of higher education or an approved private provider. See Chapter 3 of this bulletin for a description of the following teaching authorizations:

- a. Level 1 Professional Certificate;
- b. Level 2 Professional Certificate;
- c. Level 3 Professional Certificate;
- d. Type C Certificate;
- e. Type B Certificate;
- f. Type A Certificate; and
- g. Out-of-State Certificate.

2. For a complete description of the Practitioner Licenses (PL1, PL2, PL3, and PL4) issued by the state to persons enrolled in a state-approved alternate teacher education program, see Chapter 3 of this bulletin. Because alternate routes meet requirements established in the federal mandate, teachers who meet admission criteria for alternate program enrollment are identified as highly qualified.

J. Nonstandard Teaching Certificates

1. See Chapter 3 of this bulletin for a description of nonstandard teaching authorizations, as follows:

- a. Temporary Authority to Teach;
- b. Out-of-Field Authorization to Teach; and
- c. Temporary Employment Permit.

2. Teachers holding a temporary certificate do not meet the NCLB "highly qualified teacher" definition because they have not demonstrated subject matter competency under NCLB legislation.

K. **Technical Assistance and Support.** The Louisiana Department of Education provides technical assistance and support to local education agencies to ensure faithful implementation of the NCLB mandate. Technical assistance and support includes but is not limited to the following activities:

1. providing each candidate on a temporary license with a "feedback sheet". A certification specialist or certification counselor who receives the request for certification evaluates the transcripts (if available) and

prepares a feedback sheet, based on the information submitted to the state by the district representative;

2. monitoring of certification folders per the NCLB consolidated monitoring process;

3. collaborating with the Board of Regents (BOR) and college/university personnel to determine ways college/university programs might assist the state by addressing areas of need (e.g., if special education programs are needed in certain geographic areas, SDE staff will collaborate with university personnel and BOR to facilitate provision of such programs);

4. prescribing the shortest route to certification, handled at the state level by certification specialists and at the local level by certification counselors;

5. using a two pronged approach to recruit candidates to pursue teaching as a career:

a. a human resources component, through the regional certification counselors;

b. a technological component, through the Teach Louisiana website at www.teachlouisiana.net.

L. **Louisiana Definition: Highly Qualified Teacher.** For purposes of NCLB Highly Qualified requirements, a "new" teacher is defined as an individual who is who is new to the teaching profession. A "not new" teacher is defined as an individual with one or more years of teaching experience earned while holding a standard teaching certificate. Teaching experience earned while holding a temporary, provisional, or emergency authorization (e.g., a Temporary Authority to Teach [TAT]) does not qualify.

1. New elementary teacher:

a. holds a standard elementary school education certificate, a special education certificate that includes elementary school grades, or a special foreign language certificate to teach a specific foreign language in grades K-8;

b. has passed the Louisiana content-specific elementary education licensing exam;

c. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis.

2. Not new elementary teacher:

a. holds a standard elementary school education certificate, a special education certificate that includes elementary school grades, or a special foreign language certificate to teach a specific foreign language in grades K-8;

b. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

c. has demonstrated content mastery by one of the following means:

i. passed the Louisiana content-specific elementary education licensing exam;

ii. holds a current National Board for Professional Teaching Standards (NBPTS) certification in early childhood, middle childhood, or in a content area basic to the elementary school (e.g., Early Language Arts, Early Mathematics) and is teaching in the NBPTS area of certification;

iii. has at least 12 semester hours of credit in each of the four core disciplines (English/language arts, including reading and writing; math; science; and social studies);

iv. by the end of the 2005-2006 school year, qualifies under the High Objective Uniform State Standard

of Evaluation (HOUSSE) Plan for Not New Elementary Teachers, as follows:

(a). a "not new" teacher who does not meet the requirements of Subparagraphs a-c above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes 90 Continuing Learning Units (CLUs) by the end of the 2005-2006 school year, with the beginning of the 2001-2002 school year as the beginning date for earning CLUs;

(b). a "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience;

(c). the Local Education Agency (LEA) is responsible for maintaining documentation for educators seeking "highly qualified" status, as defined by NCLB, through the HOUSSE option (90 CLUs), as follows:

(i). identifying teachers in their employment using the HOUSSE option;

(ii). providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs;

(d). see the Section at the end of this chapter entitled "Continuing Learning Units (CLUs)."

3. New middle school teacher:

a. holds a standard certificate for middle school education; middle school English/language arts, mathematics, science, or social studies; a special education area that includes middle school grades; a secondary academic content area; or a special foreign language certificate to teach a specific foreign language in grades K-8;

b. has demonstrated content mastery by one of the following means:

i. has the equivalent of an academic major in a content area appropriate to the middle school level, for every core academic subject the individual teaches;

ii. has passed the Louisiana content-specific licensing exam required for a middle school academic content area or for a secondary (grades 6-12) academic content area that is appropriate to the middle school level, for every core academic subject the individual teaches;

iii. has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

c. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis.

4. Not new middle school teacher:

a. holds a standard teaching certificate appropriate for grades 6-8 (e.g., Elementary Education 1-8, Upper Elementary Education 5-8, Middle School Education); a special education area that includes middle school grades; a secondary academic content area; or a special foreign language certificate to teach a specific language in grades K-8;

b. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

c. has demonstrated content mastery by one of the following means:

i. passed the Louisiana content-specific licensing exam required for a middle school academic content area or for a secondary (grades 6-12) academic content area that is appropriate to the middle school level, for every core academic subject the individual teaches;

ii. has the equivalent of an academic major in a content area appropriate to the middle school level, for every core academic subject the individual teaches;

iii. earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

iv. holds a current National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification;

v. by the end of the 2005-2006 school year, qualifies under the High Objective Uniform State Standard of Evaluation (HOUSSE) Plan for Not New Middle School Teachers:

(a). a "not new" teacher who does not meet the requirements of Subparagraphs a-c above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes 90 Continuing Learning Units (CLUs) by the end of the 2005-2006 school year, with the beginning of the 2001-2002 school year as the beginning date for earning CLUs;

(b). a "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience;

(c). the Local Education Agency (LEA) is responsible for maintaining documentation for educators seeking "highly qualified" status, as defined by NCLB, through the HOUSSE option (90 CLUs):

(i). identifying teachers in their employment using the HOUSSE option; and

(ii). providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs;

(d). see the Section at the end of this chapter entitled "Continuing Learning Units (CLUs)."

5. New secondary teacher:

a. holds a standard certificate for every core academic subject the individual teaches;

b. has demonstrated content mastery by one of the following means:

i. has the equivalent of an academic major for every core academic subject the individual teaches;

ii. has passed the Louisiana content-specific licensing exam for every core academic subject the individual teaches;

iii. has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

c. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis.

6. Not new secondary teacher:

a. holds a standard certificate for every core academic subject the individual teaches;

b. does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis;

c. has demonstrated content mastery by one of the following means:

i. passed the Louisiana content-specific licensing exam for every core academic subject the individual teaches;

ii. has the equivalent of an academic major for every core academic subject the individual teaches;

iii. earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches;

iv. holds a current National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification;

v. by the end of the 2005-2006 school year, qualifies under the High Objective Uniform State Standard of Evaluation (HOUSSE) Plan for Not New Secondary Teachers:

(a). a "not new" teacher who does not meet the requirements of Subparagraphs a-c above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes 90 Continuing Learning Units (CLUs) by the end of the 2005-2006 school year, with the beginning of the 2001-2002 school year as the beginning date for earning CLUs;

(b). a "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience;

(c). the Local Education Agency (LEA) is responsible for maintaining documentation for educators seeking "highly qualified" status, as defined by NCLB, through the HOUSSE option (90 CLUs):

(i). identifying teachers in their employment using the HOUSSE option; and

(ii). providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs;

(d). see the Section at the end of this chapter entitled "Continuing Learning Units (CLUs)."

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1105. Highly Qualified Policy for Paraprofessionals

A. The NCLB legislation signed into law by President Bush on January 8, 2002, was established to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and, at minimum, reach proficiency on challenging state academic achievement standards and assessments. Title I, as amended by NCLB, has new requirements for paraprofessionals.

B. Definition of Paraprofessional

1. For the purposes of Title I, Part A, a *paraprofessional* is an employee who provides instructional support in a program supported with Title I, Part A funds. This includes paraprofessionals working in any of the following capacities:

a. providing one-on-one tutoring if such tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

b. assisting with classroom management, such as organizing instructional and other materials;

c. providing instructional assistance in a computer laboratory;

d. conducting parental involvement activities;

e. providing support in a library or media enter;

f. acting as a translator;

g. providing instructional support services under the direct supervision of a teacher [Title I, Section 1119(g)(2)].

2. Individuals functioning as interpreters/translators, who are providing communication assistance only (not instructional support), are not considered paraprofessionals under Title I if they possess one of the following Educational Interpreter certificates:

a. Ancillary Provisional Certificate;

b. Ancillary Grandfather Certificate; or

c. Qualified Ancillary Certificate.

3. Individuals who work in food services, cafeteria or playground supervision, personal care services, non-instructional computer assistance, and similar positions are not considered paraprofessionals under Title I.

C. Requirements for Title I Paraprofessionals. All Title I paraprofessionals hired on or before January 8, 2002, and working in a program supported with Title I funds must have met the following requirements by January 8, 2006. All Title I paraprofessionals hired after January 8, 2002, must meet the following requirements to be hired:

1. possess a secondary school diploma or its recognized equivalent (e.g., Graduate Equivalency Examination—GED). This includes paraprofessionals who serve as translators or who conduct parental involvement activities;

2. satisfy one of the following:

a. pass a state approved assessment for paraprofessionals;

b. obtain an Associate (or higher) Degree at a higher education institution;

c. complete two years of full-time study at an institution of higher education.

D. Louisiana Pathways for Paraprofessionals to Meet Federal Requirements. The U.S. Department of Education specifies that paraprofessionals should be able to demonstrate knowledge of and the ability to assist in instruction in the areas of reading, writing, and math, or in "school readiness." Paraprofessionals are expected to have a working knowledge of these academic areas. Louisiana offers all paraprofessionals three ways to meet federal requirements.

1. State Test. A paraprofessional who passes the Educational Testing Service (ETS) Para-Pro Assessment will meet state and federal requirements to be classified as a "highly qualified paraprofessional." A paraprofessional who is "not new to the profession" who passes the ACT Work Keys assessment and who has successful observations will meet state and federal requirements to be classified as a "highly qualified paraprofessional."

2. Two Years of Full-Time Study (48 Semester Credit Hours). State, district, and post-secondary education

personnel collaborated in identifying course requirements for paraprofessionals (within a state approved institution of higher education) that would assist paraprofessionals when instructing students in the areas of reading, writing, math, and school readiness.

3. Associate Degree. State, district, and post-secondary education personnel collaborated in identifying course requirements for paraprofessionals (within a state-approved institution of higher education) that would assist paraprofessionals when instructing students in the areas of reading, writing, math, and school readiness.

E. State-Approved Institutions of Higher Education. State-approved higher education institutions may offer coursework to paraprofessionals. To be approved by the state, institutions must be accredited by a nationally recognized accrediting entity or granted pre-accreditation status. Newly developed public institutions that are formally seeking accreditation through the Southern Association for Colleges and Schools may obtain pre-accreditation status from the state. A list of approved institutions is available from the Department of Education upon request.

F. Louisiana Definition: Highly Qualified Paraprofessional

1. New to the Profession—a paraprofessional must satisfy one of the following:

- a. passed the ETS Para-Pro Assessment;
- b. has two years of full-time study (48 semester credit hours) from the recommended list of state-approved institutions of higher education or from a regionally accredited institution(s) of higher education. A total of 15 hours of general education course requirements include English Composition (3), English/Reading (6), and Mathematics (6). For the remaining 33 hours of coursework, acceptance of credit for a course shown on a transcript from an approved higher education institution is left to school district discretion in addressing the needs of the specific job;
- c. has Associate of Arts or Associate of Applied Science degree from a state-approved or regionally accredited institution of higher education.

2. Not New to the Profession—a paraprofessional must satisfy one of the following:

- a. passed the ETS Para-Pro Assessment;
- b. has two years of full-time study (48 semester credit hours) from the recommended list of state-approved institutions of higher education or from a regionally accredited institution of higher education. A total of 15 hours of general education course requirements include English Composition (3), English/Reading (6), and Mathematics (6). For the remaining 33 hours of coursework, acceptance of credit for a course shown on a transcript from an approved higher education institution is left to school district discretion in addressing the needs of the specific job;
- c. has Associate of Arts or Associate of Applied Science degree from a state-approved or regionally accredited institution of higher education;
- d. has successfully completed the ACT, Inc., Work Keys skills assessments and on-the-job observation

G. Curriculum-based Pathways for Paraprofessionals. General Education and Teacher Preparation coursework must address the K-12 state content standards, Louisiana Components of Effective Teaching, National Council for the Accreditation of Teacher Education (NCATE) standards, and

Praxis expectations. In addition to the ETS ParaPro Assessment, the State specified three curriculum-based pathways for paraprofessionals to meet federal requirements, as follows.

1. Total of 48 Credit Hours
 - a. General Education Courses—15 semester hours:
 - i. English Composition (3 hours);
 - ii. English/reading (6 hours);
 - iii. Mathematics (6 hours).
 - b. Paraprofessional Courses—for the remaining 33 semester hours, acceptance of credit for a course shown on a transcript from an approved institution of higher education is left to school district discretion in addressing needs of a specific job.
 - i. Guidelines for prescriptive plan requiring additional coursework—school districts should consider at least three hours of reading and at least 12 hours from a list of available paraprofessional courses, as follows:
 - (a). Strategies for Teaching and Learning;
 - (b). Assessment of Learning;
 - (c). Classroom and Behavior Management;
 - (d). Addressing the Needs of Exceptional Children.
 - ii. Discipline-specific electives may include as many as 12 hours of developmental (remedial) courses.
2. Associate of Applied Science Degree (60+ credit hours)
 - a. General Education Courses—15 semester hours:
 - i. English Composition (3 hours);
 - ii. Humanities (3 hours);
 - iii. Math—Algebra (3 hours);
 - iv. Natural Sciences (3 hours);
 - v. Social and Behavioral Science (3 hours).
 - b. Teacher Preparation Courses—Child/Adolescent Development (3 hours)
 - c. Paraprofessional Courses—30 semester hours:
 - i. Introduction to Paraprofessional Education (3);
 - ii. Applied Literacy Development (3);
 - iii. Strategies for Teaching and Learning (3);
 - iv. Applied Assessment of Learning (3);
 - v. Applied Classroom Behavior Management (3);
 - vi. Addressing the Needs of Exceptional Children (3);
 - vii. Application of Computer Technology (3);
 - viii. Family, School, and Community Relations (3);
 - ix. Health and Safety in Schools (3);
 - x. Paraprofessional Practicum—Teaching, Learning, and Record Keeping (3).
3. Associate of Arts Degree (60+ credit hours)
 - a. General Education Courses—54 semester hours:
 - i. English Composition (6 hours);
 - ii. Humanities: English Literature (6 hours);
 - iii. Math—Algebra, etc. (12 hours);
 - iv. Natural Sciences (15 hours);
 - v. Social and Behavioral Science (12 hours);
 - vi. Fine Arts (3 hours).
 - b. Teacher Preparation Courses—9 hours. Select three of the following:
 - i. Child/Adolescent Development (3 hours);
 - ii. Educational Psychology (3 hours);
 - iii. Multicultural/Exceptional Education (3 hours):
 - (a). Educational Technology (3 hours);

(b). Children's Literature (3 hours).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1107. Continuing Learning Units (CLUs)

A. A Continuing Learning Unit (CLU) is a professional development activity that builds capacity for effective, research-based, content-focused teaching and learning that positively impacts student achievement. As a unit of measure, it is used to quantify an educator's participation in a district or system-approved, content-focused professional development activity aligned with the educator's individual professional growth plan.

B. Educators may earn one CLU for each clock hour of active engagement in a district or system-approved high quality professional development activity. Each educator is responsible for maintaining required documentation and for reporting earned CLUs in a manner prescribed by the district or system. Earned CLUs will transfer across Local Education Agencies (LEAs).

C. Under the No Child Left Behind (NCLB) Act of 2001, Louisiana developed a High Objective Uniform State Standard of Evaluation (HOUSSE) option for teachers to gain highly qualified status. The HOUSSE option provides that a teacher "not new" to the state's school systems can be considered highly qualified if he/she completes 90 CLUs by the end of School Year 2005-2006.

D. The Louisiana Components of Effective Professional Development (see Appendix E) is used to define the 90 CLUs. The beginning date for earning CLUs is the onset of the 2001-2002 school year. The "not new" teacher's previous work experience as a fully certified teacher may be credited as CLUs at the rate of three CLUs for each year of successful experience in the content area, with a maximum of 45 CLUs earned through work experience.

E. For educators seeking "highly qualified" status through HOUSSE (90 CLUs), the LEA maintains documentation by:

1. identifying those teachers in their employment using the HOUSSE option; and
2. providing an annual update on each identified teacher's status (progress) toward earning the required 90 CLUs.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1109. Federal Legislation Related to Qualifications of Teachers and Paraprofessionals

A. Title 17 of the Louisiana Statutes also contains a portion of Title 20: Education, known as the federal "No Child Left Behind" Act. Specifically, see Paragraph 6319 of Chapter 70 pertains to qualifications for teachers and paraprofessionals.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

Chapter 12. Approved Courses to Reinstate Lapsed Certificates

§1201. Period of Validity

A. The period of validity for a Louisiana teaching certificate is subject to the provision that the certificate holder does not allow a period of five or more consecutive calendar years of disuse to accrue, and/or the certificate is not revoked by the State Board of Elementary and Secondary Education acting in accordance with law. When used relative to certificate validity, the term "disuse" is defined as a period of five consecutive calendar years in which a certificated individual is not a teacher of record for at least one semester, or 90 consecutive days. If such a period of disuse occurs, the certificate has lapsed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1203. Reinstatement of a Lapsed Certificate

A. Reinstatement of a lapsed certificate is made only on evidence that the holder has earned six semester hours of credit from a regionally accredited institution of higher education in approved courses. The credit must be earned within the five year period immediately preceding reinstatement of the certificate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1205. Certificate Reinstatement Coursework

A. Chapter 11 contains a listing of types of coursework that have been approved for reinstating a lapsed certificate. The following notes pertain to certificate reinstatement coursework across all areas of certification.

1. Teachers with multiple certification areas may complete coursework specific to any of their certification areas.
2. Coursework must be reflected on a transcript from a regionally accredited institution of higher education.
3. Course credit must be earned within the five year period immediately preceding reinstatement of the certificate.
4. Coursework cannot be a repeat of prior coursework shown on a transcript, unless the student failed or earned a "D" in the course.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1207. Responsibility of the Employing Authority

A. When a city or parish employing authority desires to hire a teacher whose certificate has lapsed or expired, it is the responsibility of the employing authority to notify the Louisiana Department of Education, Division of Teacher Certification and Higher Education.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1209. Early Childhood (PK, K, PK-3)

A. Types of Approved Coursework to Reinstate an Early Childhood (PK, K, PK-3) or an Elementary Grades (1-4, 1-6, 1-8) certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. early numeracy concepts of mathematics;
5. other content in mathematics;
6. content in english/language arts;
7. content in science;
8. content in social studies;
9. classroom and/or behavior management;
10. technology in the classroom;
11. teaching in an inclusive setting.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1211. Middle Grades (4-8, 5-8)

A. Types of Approved Coursework to Reinstate a Middle Grades (4-8, 5-8) certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. early numeracy concepts of mathematics;
5. other content in mathematics;
6. content in english/language arts;
7. content in science;
8. content in social studies;
9. content specific to subject area of certification;
10. classroom and/or behavior management;
11. technology in the classroom;
12. teaching in an inclusive setting.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1213. Secondary (6-12, 7-12)

A. Types of Approved Coursework to Reinstate a Secondary (6-12, 7-12) certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. content specific to subject area of certification;
5. classroom and/or behavior management;
6. technology in the classroom;
7. teaching in an inclusive setting.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1215. Special Education

A. Types of Approved Coursework to Reinstate a Special Education certificate:

1. diagnostic and prescriptive reading;
2. reading in the content area;
3. other content in reading;
4. early numeracy concepts of mathematics;

5. other content in mathematics;
6. content in english/language arts;
7. content in science;
8. content in social studies;
9. content specific to subject area of certification;
10. classroom and/or behavior management;
11. technology in the classroom;
12. teaching in an inclusive setting.
13. vocational and transition services for students

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1217. All Level (K-12)

A. Types of approved coursework to reinstate an all-level (K-12) certificate (art, dance, foreign language, health and physical education, or music):

1. content in reading;
2. content specific to subject area of certification;
3. classroom and/or behavior management;
4. technology in the classroom;
5. teaching in an inclusive setting.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1219. Ancillary Certificate

A. Types of approved coursework to reinstate an ancillary certificate:

1. content specific to subject area of certification;
2. coursework included in a prescriptive degree program in which certificate holder is enrolled;
3. classroom and/or behavior management.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

Chapter 13. Ancillary Certification

§1301. General Provisions

A. Ancillary certificates are issued to individuals who provide teaching, support, administrative, or supervisory services to children in Louisiana K-12 schools. Recipients of these certificates are qualified persons who are not certified teachers in the particular area of ancillary certification. The holder of an ancillary certificate is authorized to perform only those services stated specifically on the certificate.

B. Chapter 3 of this bulletin sets forth the *teaching* areas for which ancillary certificates are issued. Chapter 4 of this bulletin concerns ancillary certificates issued for those who provide *support services* in K-12 schools. Chapter 7 of this bulletin specifies ancillary certificates issued for those who provide *administrative and supervisory services* in K-12 schools. This appendix provides a brief outline of all ancillary areas for which certificates are issued in Louisiana.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1303. Ancillary Teaching Certificates

A. There are three types of ancillary *teaching* certificates.

1. Artist or Talented Certificate—issued to an applicant with an advanced degree in an artistic or talented field, or who has produced evidence of creative accomplishments over an extended period of time. The certificate allows the holder to provide artistic and/or creative services in a regular classroom to children at any age level.

2. Nonpublic Montessori Teacher Certificate—issued to a qualified person who teaches in a nonpublic school setting using the Montessori method.

3. Family and Consumer Sciences (Occupational Programs)—issued to a qualified person authorizing him/her to teach in the family and consumer sciences areas of child care, clothing service, food service, housing and interior design, and institutional home management.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

§1305. Ancillary School Service Certificates

A. An ancillary certificate can be issued in the following school service areas.

1. Child Nutrition Program Supervisor—issued to an individual with a master's degree from a regionally accredited institution of higher education in home economics, institutional management, nutrition, dietetics, business administration, food technology, or public health nutrition.

2. Educational Interpreter and/or Transliterator—issued to an individual who facilitates communication within an instructional environment, via an enhanced visual and/or tactile mode, between and among deaf/hard of hearing individuals and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

3. School Librarian—issued to individuals with a master's degree in library science from a regionally accredited institution.

4. School Nurse—issued to individuals who have current Louisiana licensure as a registered professional nurse.

5. Social Worker—issued to individuals with master's degrees in social work or social welfare science from a regionally accredited institution.

6. Special Education Examiners—state statute requires that each school district have assessment teams for the purpose of identifying and evaluating the individual needs of each child with exceptionalities. In addition to an Educational Diagnostician (which is not an ancillary certification area), the teams may include any number of the specialists outlined below:

- a. audiologist;
- b. school psychologist;
- c. supervisor of school psychological services;
- d. speech pathology assistant;
- e. speech pathologist;
- f. speech therapist/American Speech and Hearing Association (ASHA).

7. School therapists:

- a. school art therapist;
- b. dance therapist;
- c. music therapist;
- d. occupational therapist;
- e. physical therapist;
- f. recreational therapist.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

Chapter 14. Glossary

A. Terms

Alternate Teacher Preparation Program—a pathway designed for candidates with a minimum of a baccalaureate degree earned at a regionally accredited institution. An alternate program combines professional knowledge with field experiences, including a one year supervised internship in a school setting. For admission to an alternate program, applicants must demonstrate content mastery.

Ancillary Certificate—a type of Louisiana certificate that allows a qualified person who is not a certified teacher to provide services in a school setting.

Baccalaureate—a term used to denote an undergraduate degree or program (e.g., Bachelor of Arts, Bachelor of Science).

Certification—a licensing process whereby qualified professionals become legally authorized to teach or to perform designated duties in the schools under the jurisdiction of the State Board of Elementary and Secondary Education (BESE).

Continuing Learning Unit (CLU)—a professional development activity that builds capacity for effective, research-based, content-focused teaching and learning that positively impacts student achievement. As a unit of measure, the CLU is used to quantify an educator's participation in a system-approved content-focused professional development activity aligned with the educator's individual professional growth plan.

Core Subject Areas (per No Child Left Behind federal legislation)—English, reading, language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography.

Endorsement—a permanent certification authorization added to an existing teaching certificate.

Graduate—a term used to denote a degree, coursework, or program beyond the baccalaureate degree level (e.g., Masters of Education, Masters of Arts in Teaching).

Industry Based Certification—a certificate that provides evidence that an individual has successfully demonstrated skill competencies in a specific set of work related tasks, single occupational area, or a cluster of related occupational areas (e.g., Certified Landscape Technician, ASE Certification, Licensed Cosmetologist).

Non-Standard Certificate—a one year temporary authorization that can be issued three times to an applicant who is pursuing full credentialing as a teacher. To have this certificate re-issued for Year 2 and for Year 3, an applicant must meet specified renewal requirements.

Post-Baccalaureate (or old) Alternate Certification Program—a program offered prior to July 1, 2002, that provided opportunities for individuals with a minimum of a baccalaureate degree to become certified public school

teachers. Applicants seeking certification under this program submitted an official transcript for evaluation to a Louisiana college or university that had an approved teacher education program.

Paraprofessional—an employee who provides instructional support in a program supported with Title I, Part A funds.

Regionally Accredited—a term used to denote the status of public recognition that a regionally recognized accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Regularly Employed—a term used to denote an individual who is a full-time or part-time employee of a school system, and who is not hired on a day-to-day basis.

Standard Certificate—a credential issued by the state to an individual who has met all requirements for full certification as a teacher.

Teacher—an employee of a city or parish school board or of a BESE special school who holds a teaching certificate and whose legal employment requires certification under the regulations of BESE.

Teacher Education Program Completer—an individual who satisfies all requirements of a traditional teacher preparation undergraduate degree program or of an approved alternate teacher preparation program.

Teaching Certificate—a license, permit, or certificate issued by the Louisiana Department of Education to an individual who has met all state requirements for certification as a teacher.

Temporary License—a teaching authorization held for a short period that is not a standard certificate (see "non-standard certificate" above).

Traditional Teacher Preparation Program—a Bachelor of Arts or Bachelor of Science degree program that includes general education courses, certification focus area(s), professional education courses, field experiences, and student teaching in a school setting.

Undergraduate—a term used to denote a degree, coursework, or program at the baccalaureate degree level (e.g., Bachelor of Arts, Bachelor of Sciences).

B. Acronyms

BESE—Board of Elementary and Secondary Education

CLU—Continuing Learning Unit (professional development)

CTTIE—Career and Technical Trade and Industrial Education

HOUSSE (*per the federal No Child Left Behind Act of 2001*)—High Objective Uniform State Standard of Evaluation (for highly qualified status of teachers)

INTASC—Interstate New Teacher Assessment and Support Consortium

LCET—Louisiana Components of Effective Teaching

LaTAAP—Louisiana Teacher Assistance and Assessment Program

NASDTEC—National Association of State Directors of Teacher Education and Certification

NCATE—National Council for Accreditation of Teacher Education

NCLB—No Child Left Behind Act of 2001 (federal law)

OFAT—Out-of-Field Authority to Teach, a non-standard license

TAT—Temporary Authorization to Teach, a non-standard license

TEP—Temporary Employment Permit, a non-standard license

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 746—Louisiana Standards for State Certification of School Personnel**

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

This change in Bulletin 746 will incorporate Appendices B-D and the Glossary as Chapters 11-14, as follows: Chapter 11—State and Federal Guidelines Related to No Child Left Behind Federal Legislation: Qualifications for Teacher and Paraprofessional; Chapter 12—Approved Courses to Reinstate a Lapsed Certificate; Chapter 13—Ancillary Certification; and Chapter 14—Glossary. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Acting Deputy Superintendent
Management and Finance
0706#007

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1566—Pupil Progression Policies and Procedures
(LAC 28:XXXIX.101, 103, 501-505, 707,
901, 905-911, 1101, 1301, and 1501)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1566—Pupil Progression Policies and Procedures* (LAC Part Number XXXIX). The revisions include changing the title of Bulletin 1566 from *Guidelines for Pupil Progression* to *Pupil Progression Policies and Procedures*, deleting the number "21" from references to LEAP and GEE, and making some technical edits required by the department's proofreader.

Title 28

EDUCATION

**Part XXXIX. Bulletin 1566—Pupil
Progression Policies and Procedures**

Chapter 1. Purpose

§101. Foreword

A. This publication represents a forward step in the implementation of a vital component of R.S. 17:24.4. These Policies and Procedures represent a cooperative effort of offices in the Louisiana Department of Education (LDE), and educators from across the State.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999), amended LR 33:

§103. Preface

A. - D. ...

E. The Louisiana State Legislature in Regular Session during the summer of 1997 amended and reenacted R.S. 17:24.4(F) and (G)(1), relative to the Louisiana Competency-Based Education Program, to require proficiency on certain tests as determined by the State Board of Elementary and Secondary Education (SBESE) for student promotion and to provide guidance relative to the content of Pupil Progression Plans.

F. The amended sections relate state content standards adopted for mathematics, English language arts, science, and social studies, to the Louisiana Educational Assessment Program (LEAP), and to the comprehensive Pupil Progression Plans of each of the local educational agencies.

G. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2169 (November 1999), amended LR 33:

**Chapter 5. Placement Policies; State Requirements
§501. State Requirements**

A. Each local Pupil Progression Plan shall contain written policies relative to regular placement and alternatives to regular placement. Such policies must conform to the requirements of these policies and procedures.

B. Based upon local school board policy pursuant to these policies and procedures, each teacher shall, on an individualized basis, determine promotion or placement of each student [Act 750; R.S. 17:24.4(G)]. Local school board policies relative to pupil progression will apply to students placed in regular education programs as well as to exceptional students and to students placed in alternative programs. Placement decisions for exceptional students must be made in accordance with the least restrictive environment requirements of state and federal laws (Act 754 Regulations, Subsection 443).

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 1999), amended LR 33:

§503. Regular Placement¹

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

i. Each plan shall include the statement that, in addition to completing a minimum of 23 Carnegie units of credit as presented by SBESE, the student shall be required to pass the required components of the Graduation Exit Examination in order to receive a high school diploma.

ii.(a). No fourth or eighth grade student shall be promoted until he or she has scored at or above the "Basic" achievement level on the English Language Arts or Mathematics components of the LEAP and at the "Approaching Basic" achievement level on the other (hereafter referred to as the "Basic/Approaching Basic" combination).

(b). Exceptional students participating in LEAP must be provided with accommodations as noted in the students' IEPs.

c. - c.i. ...

ii. Retention Policies (Fourth Grade). The decision to retain a student in the fourth grade more than once as a result of failure to score at or above the "Basic/Approaching Basis" combination on the English Language Arts and Mathematics components of LEAP shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following.

(a). - (b). ...

(c). Students retained in the fourth grade shall retake all four components of the LEAP.

(d). For promotional purposes, a student must score at or above the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of the LEAP only one time.

iii. ...

(a). The student's highest score in English Language Arts and/or Mathematics on either the spring or

summer LEAP must fall within 20 scaled score points of the cutoff score for "Basic."

(b). ...

(c). The student must have attended the LEAP summer remediation program.

(d). The student must have taken the LEAP retest given after the LEAP summer remediation program has been concluded.

(e). - (f). ...

iv. Retention Policies (Eighth Grade). After the summer retest, a school system, through its superintendent, may consider a waiver for an eighth grade student who has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP. The LEA may grant the waiver in accordance with the local Pupil Progression Plan provided the following criteria are met.

(a). The student may be promoted to the ninth grade, provided that he or she has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP, has attended the LEAP summer remediation program offered by the district, and has taken the summer retest administered at the conclusion of the summer program.

iv.(b). - v.(a). ...

(b). promoted to the ninth grade, provided that the student has scored at the "Approaching Basic" level on either the English Language Arts or Mathematics component of LEAP, has attended the LEAP summer remediation program offered by the District in, at a minimum, the "Unsatisfactory" subject, and has taken the summer retest administered at the conclusion of the summer program. If promoted with an "Unsatisfactory" on the English Language Arts or Mathematics component of LEAP, the student must enroll in and pass a high school remedial course in the "Unsatisfactory" subject (English language arts or mathematics) before enrolling in or earning Carnegie credit for English or mathematics; or

(c). ...

vi. LEAP Testing

(a). Students repeating the eighth grade will retake all four components of LEAP.

(b). ...

vii. Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessment. Students with disabilities who participate in the LEAP Alternate Assessment, Level 1 (LAA1), shall have promotion decisions determined by the SBLC.

vii.(a) - viii. ...

ix. Waiver for Extenuating Circumstances. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP testing or unable to attend LEAP summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation: a physical illness or injury that is acute or catastrophic in nature, a chronic physical condition that is in an acute phase or court ordered custody issues. (Refer to Appendix B, Chapter 13.)

x. State Granted Exceptions. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver

from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances. The Department of Education will provide information to the State Board of Elementary and Secondary Education detailing state-granted waivers. (Refer to Appendix B, Chapter 13.)

xi. In order to move students toward grade level performance, LEAs shall design and implement additional instructional strategies for those fourth and eighth grade students being retained. The purpose of the additional instructional strategies is to move the students to grade-level proficiency by providing the following: focused instruction in the subject area(s) on which they scored at the "Approaching Basic" and/or "Unsatisfactory" level on LEAP, and ongoing instruction in the core subject areas using curricula based on State-level content standards and the Grade Level Expectations. LEAs are also encouraged to design and implement additional instructional strategies for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on LEAP.

xii. Summer remediation programs and end-of-summer retests must be offered by school systems at no cost to students who did not take the Spring LEAP tests or who failed to achieve the required level on LEAP.

(a). Students with disabilities who participate in LEAP Alternate Assessment, Level 1 (LAA1), are not eligible to attend LEAP summer remediation programs.

xii.(b). - xiv.(b). ...

B. Retention—Grades K-12

1. Retention of a student shall be based upon the student's failure to meet the criteria established by local boards for promotion and other criteria contained in these policies and procedures.

C. - D.1. ...

a. Effective with the 2000-2001 school year, students in grades 5 and 9 transferring to the public school system from any in-state nonpublic school (state approved and unapproved), any home schooling program or Louisiana resident transferring from any out-of-state school shall be required to pass the English language arts and Mathematics portions of the state-developed LEAP placement test.

¹Schools can only make recommendations to parents regarding student enrollment in kindergarten, since kindergarten is not mandatory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004), LR 31:1974 (August 2005), LR 31:3103 (December 2005), LR 33:

§505. Progression—Students Participating in LEAP Alternate Assessment Level 1 (LAA1) or LEAP Alternate Assessment Level 2 (LAA2)

A. Students with disabilities who participate in the LEAP Alternate Assessments (LAA1 or LAA2) shall have promotion decisions determined by the School Building Level Committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2172 (November 2000), amended LR 26:1433 (July 2000), LR 27:189 (February 2001), LR 27:1683 (October 2001), LR 29:123 (February 2003), LR 30:409 (March 2004), LR 33:

Chapter 7. Placement Policies; Local Options

§707. Other Local Option Factors

A. In conjunction with the enumerated legislated policies and LDE directives, local school systems may include evaluative criteria in their local Pupil Progression Plans. If other criteria are used, the Pupil Progression Plan must so specify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 33:

Chapter 9. Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program

§901. Preface

A. The regulations for remedial education programs approved by the State Board of Elementary and Secondary Education are an addendum to *Bulletin 1566—Pupil Progression Policies and Procedures*, Board Policy 4.01.90. The regulations provide for the development of local remedial education programs by local education agencies.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 33:

§905. Definition and Purpose

A. - B. ...

1. The purpose of the Louisiana Remedial Education Act is to provide supplemental funds for the delivery of supplemental remedial instruction adapted for those eligible students in the elementary and secondary schools of this state as set forth in the city and parish school board Pupil Progression Plans. A program of remedial education shall be put into place by local parish and city school systems following regulations adopted by the department and approved by the state board pursuant to R.S. 17:24.4. All eligible students shall be provided with appropriate remedial instruction (R.S. 17:395 A).

2. ...

3. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the "Approaching Basic" or "Unsatisfactory" level on the LEAP English Language Arts and/or Mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

4. Remediation shall be provided to students who score at the "Unsatisfactory" level on the LEAP Science and Social Studies tests.

5. Remediation is recommended for fourth and eighth grade students who score at the "Approaching Basic" level on the LEAP Science or Social Studies tests.

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2173 (November 1999), amended LR 28:1189 (June 2002), LR 30:409 (March 2004), LR 31:1975 (August 2005), LR 33:

§907. Responsibilities of the State Board of Elementary and Secondary Education

A. ...

1. approve as a part of the *Pupil Progression Policies and Procedures* (Bulletin 1566) the regulations for development of local remedial education programs designed to meet student deficiencies as identified through the Louisiana Educational Assessment Program in English language arts, written composition, mathematics, social studies and science [R.S. 17:399(A)] for the Graduation Exit Examination and English language arts, mathematics, science and social studies for LEAP;

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999), amended LR 33:

§909. State Funding of Remedial Education Programs

A. - D. ...

E. For funding purposes, a student receiving remediation in English language arts, written composition, mathematics, social studies and/or science, shall be counted for each area in which remediation is needed [R.S. 17:398(B)] for the Graduation Exit Examination and for English language arts and mathematics for LEAP.

F. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2174 (November 1999), amended LR 33:

§911. Criteria for State Approval

A. Student Eligibility

1. Any public elementary or secondary student, including a student with a disability participating in LEAP who does not meet the performance standards established by the department and approved by the state board, as measured by the state criterion-referenced tests, shall be provided remedial education (R.S. 17:397).

A.2. - C.1. ...

a. The Remedial Education Student Profile for the LEAP /Graduation Exit Examination, provided by the LDE shall be used by the local school system for providing remediation for each eligible student (Board Policy).

2. - 2a. ...

3. Instruction

a. For the Graduation Exit Examination (GEE), remediation shall be provided in English Language Arts, Mathematics, Science, and Social Studies. Students shall be offered 50 hours of remediation in each content area they do not pass.

b. Beginning in the summer of 2006, remediation in the form of summer school shall be provided to both fourth and eighth grade students who score at the "Approaching Basic" or "Unsatisfactory" level on the LEAP English Language Arts and/or Mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instruction per subject.

c. Remediation shall be provided to students who score at the "Unsatisfactory" level on the LEAP Science and Social Studies tests.

d. Remediation is recommended for fourth and eighth grade students who score at the "Approaching Basic" level on the LEAP Science or Social Studies tests.

e. - g. ...

D. Student Assessment

1. The parish and city school boards shall develop, as part of their Pupil Progression Plans, mastery criteria based on the State Content Standards, Grade-Level Expectations (GLEs), and local curricula based on these standards and GLEs [R.S. 17:395(D) and Board Policy].

2. For the Graduation Exit Examination these mastery criteria shall be used in determining the extent of student achievement in those grade appropriate skills in English language arts, written composition, mathematics, social studies, and/or science in which he/she was found deficient (R.S. 17:395(D), 17:24.4(G) and Board Policy).

3. For LEAP, these mastery criteria shall be used in determining the extent of student achievement in those grade appropriate skills in English language arts, mathematics, science and social studies.

4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2175 (November 1999), amended LR 27:189 (February 2001), LR 30:409 (March 2004), LR 31:1976 (August 2005), LR 33:

Chapter 11. Appendix A

§1101. Definition of Terms

A. As used in this bulletin the terms shall be defined as follows.

1. State Terms

* * *

LEAP Summer Remediation Program—the summer school program offered by the LEA for the specific purpose of preparing students to pass the LEAP summer retest in English language arts, or mathematics.

* * *

2. - 2.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2176 (November 1999), amended LR 27:190 (February 2001), LR 31:1976 (August 2005), LR 33:

Chapter 13. Appendix B

§1301. LEAP High Stakes Testing Policy

A. LEAP High Stakes Testing Policy (Grades 4 and 8)

1. A student may not be promoted to the fifth or ninth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the fourth or eighth grade LEAP and at the "Approaching Basic" achievement level on the other (hereafter referred to as the "Basic/Approaching Basic" combination). For promotional purposes; however, a student shall score at or above the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of LEAP only one time.

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in

grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of the fourth or eighth grade LEAP, as well as for students who were retained in grades 4 or 8.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP tests or who scored "Approaching Basic" and/or "Unsatisfactory" on the English Language Arts and/or Mathematics component(s) on the spring tests.

a. A student who failed to achieve the "Basic/Approaching Basic" combination is not required to attend the LEA-offered LEAP summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

c. Students with disabilities who participate in LEAP Alternate Assessment, Level 1 (LAA1), are not eligible to attend the LEAP 21 summer remediation programs.

3.d. - 4.a. ...

i. focused instruction in the subject area(s) on which they scored at the "Approaching Basic" and/or "Unsatisfactory" level on LEAP; and

ii. ...

b. LEAs are also encouraged to design and implement additional instructional strategies for students in grades 3, 4, 7, and 8 who have been determined to be at risk of failing to achieve the "Basic/Approaching Basic" combination on LEAP.

5. Promotion/Retention Policies

a. Grade 4

i. A student may not be promoted to the fifth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the fourth grade LEAP and at the "Approaching Basic" achievement level on the other.

ii. The decision to retain a student in the fourth grade more than once as a result of his/her failure to achieve the "Basic/Approaching Basic" combination on the English Language Arts and Mathematics components of LEAP shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following.

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

(a). The student's highest score in English Language Arts and/or Mathematics on either the spring or summer LEAP must fall within 20 scaled score points of the cutoff score for "Basic."

(b). ...

(c). The student must have attended the LEAP summer remediation program.

(d). The student must have taken the LEAP retest given after the LEAP 21 summer remediation program has been concluded.

(e). - (f). ...

iv. LEAP Testing

(a). Students retained in the fourth grade shall retake all four components of LEAP.

b. Grade 8

i. A student may not be promoted to the ninth grade until he or she has scored at or above the "Basic" achievement level on either the English Language Arts or Mathematics component on the eighth grade LEAP and at the "Approaching Basic" achievement level on the other.

ii. After the summer retest, a school system, through its superintendent, may consider a waiver for an eighth grade student who has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP. The LEA may grant the waiver in accordance with the local Pupil Progression Plan provided the following criteria are met.

(a). The student may be promoted to the ninth grade, provided that he or she has scored at the "Approaching Basic" level on both the English Language Arts and Mathematics components of LEAP, has attended the LEAP summer remediation program offered by the district, and has taken the summer retest administered at the conclusion of the summer program.

ii.(b). - iii.(a). ...

(b). promoted to the ninth grade, provided that the student has scored at the "Approaching Basic" level on either the English Language Arts or Mathematics component of LEAP, has attended the LEAP summer remediation program offered by the District in, at a minimum, the "Unsatisfactory" subject, and has taken the summer retest administered at the conclusion of the summer program. If promoted with an "Unsatisfactory" on the English Language Arts or Mathematics component of LEAP, the student must enroll in and pass a high school remedial course in the "Unsatisfactory" subject (English language arts or mathematics) before enrolling in or earning Carnegie credit for English or mathematics; or

(c). ...

iv. LEAP Testing

(a). Students repeating the eighth grade will retake all four components of LEAP.

5.b.iv.(b). - 6.a.i.(a). ...

(b). the student has participated in both the spring and summer administrations of LEAP and has attended the summer remediation program offered by the LEA (the student shall participate in the summer retest only on the subject that he/she scored at the "Unsatisfactory" achievement level during the spring test administration); and
a.i.(c). - d. ...

i. A school system, through its superintendent, may grant a waiver on behalf of individual students who are unable to participate in LEAP testing or unable to attend LEAP summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

i.(a). - iii. ...

(a). Students who meet the criteria for extenuating circumstances under the *physical illness, chronic physical condition, or court-ordered custody category* related to LEAP; and

(b). who are unable to participate in both the spring and the summer administration of LEAP; or

(c). who failed to achieve the "Basic/Approaching Basic" combination on the spring administration of LEAP English Language Arts and

Mathematics tests and are unable to participate in LEAP summer retest:

(i). - (iii).NOTE. ...

(d). students who meet the criteria for extenuating circumstances under the *physical illness, chronic physical condition, or court-ordered custody category* related to LEAP; and

(e). who are unable to participate in the spring testing and/or summer remediation, including the provision of remediation through hospital/home bound instruction, are required to take the LEAP summer retest. These students may be eligible for the policy override or appeals process in accordance with the local Pupil Progression Plan.

NOTE: The appeals process is available only to fourth grade students.

6.e. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 27:1683 (October 2001), LR 28:1189 (June 2002), LR 29:123 (February 2003), LR 30:409 (March 2004), LR 31:1976 (August 2005), LR 31:3104 (December 2005), LR 33:

Chapter 15. Appendix C

§1501. Waiver Request

A. - A.2.a. ...

i. the student must score at the "approaching basic" or above achievement level on either the English language arts or mathematics component of LEAP;

2.a.ii. - 3.a. ...

i. the student must meet the required combination achievement level ("Basic/Approaching Basic") on the English Language Arts and Mathematics components of LEAP;

ii. ...

iii. the student must obtain a composite score of 1200 on all four components of the fourth grade LEAP;

iv. in order to move students toward the required combination achievement level ("Basic/Approaching Basic") on the English Language Arts and Mathematics components of LEAP, the student must be provided remediation in the subject area(s) on which the student scored below "basic" on LEAP; and

v. in order for students to attain the required composite score (1200) on LEAP, focused instruction should be provided in the subject area(s) (Science and/or Social Studies) on which the student scored "unsatisfactory."

4. Section IV

a. Required Documentation

i. A school system requesting a waiver must submit data to the State Superintendent of Education that supports the effectiveness of their previously operated fourth grade transitional program. This data must include an analysis of sixth grade iLEAP scores that compare fourth grade students who repeated the entire grade, fourth grade students who repeated the grade in a transitional program (4.5 program), and fourth grade students who did not repeat any grades.

5. Section V

a. Assurances

i. I assure that the fourth grade transitional program described in the current, local Pupil Progression

Plan meets all of the requirements as outlined in Sections I, II, III, and IV of this document.

ii. ...

iii. School systems applying for this waiver must submit their request by the 2nd Friday in July, and receive approval from the State Superintendent of Education prior to the implementation of a transitional (4.5) program that provides the option of promotion to the sixth grade. School systems must submit all required documentation as listed in Section IV, and if approved, Sections I, II, and III must be included in the school system's current Pupil Progression Plan.

iv. - v. ...

6. Section VI

a. Approved/Denied: (circle one)

Paul G. Pastorek

State Superintendent of Education

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:413 (March 2004), amended LR 31:1978 (August 2005), LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1566—Pupil Progression Policies and Procedures

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

The revisions to the policy include removing the word "Guidelines" from the Bulletin title, and other technical changes. The implementation of the revisions requires no cost or savings to state or local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs or economic benefits to schools or school districts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
Management and Finance
0706#025

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1794—State Textbook Adoption Policy and Procedure Manual (LAC 28:XXXIII.507 and 701)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement amendments to *Bulletin 1794—State Textbook Adoption Policy and Procedure Manual* (LAC Part XXXIII).

Section 507.F.1 replaces the term "examination copies" with "samples" as a clarification between materials that are received by a school system for review and adoption, and textbooks that are given for review by those persons outside the adoption process.

Section 507.F.2 clarifies and replaces the term "sufficient quantities" with a description of the number of samples per grade/subject that can be requested by a school system to one per school, one per school district, and up to two additional teacher editions when requested by a supervisor.

Section 507.F.4 deletes this section which prohibited "examination copies," because §701.I now permits examination copies to be given in some cases.

Section 701.I prohibits certain promotional activities by vendors with materials under state and/or local bid process.

Section 701.I.1 clarifies that the limitations upon promotional activities do not apply to the display of materials under review nor to the dissemination of examination copies to school personnel, if the materials will be used to benefit Louisiana students.

Section 701.M adds a section to the publisher requirements that imposes limits upon the number of samples per grade/subject that can be provided to schools, districts, and/or to the Supervisor. The language parallels similar language under district requirements in §507.F.

Section 701.N adds a section to publisher requirements that outlines and imposes consequence for policy violations. The language specifies that complaints must be in writing and allows an opportunity for response to a reported violation. Consequences include a formal letter of warning to the company, recommendations from the department to the state Board of Elementary and Secondary Education for removal from the current or future adoption process, and/or the delay/negation of contract negotiations.

Title 28
EDUCATION

**Part XXXIII. Bulletin 1794—State Textbook Adoption
Policy and Procedure Manual**

Chapter 5. Local School System Responsibilities

§507. Local Adoption Procedures

A. - E.4. ...

F. Sampling of Textbooks by Publishers; Violation Will Disqualify Publisher.

1. Publishers are to furnish samples only at the written request of the local school system textbook adoption coordinator after the state committee review.

2. Samples are to be limited to one sample pack per grade/subject per school, plus one additional set per district. Supervisors may request up to two additional teacher editions per grade/subject.

3. ...

4. Publishers must notify local school systems, in writing, of the need to have samples returned. If notified by publishers, all samples received by local school systems must be picked up by the publisher within 30 days after the local adoption.

5. Publishers must make all necessary arrangements for sample returns at publisher's expense.

6. The "piloting" of new materials in any school or school system prior to official review by the State Textbook Adoption Committee and final approval by the SBESE is prohibited. Publishers are not to offer school-wide copies or classroom sets of any item or material on a trial or pilot basis.

G. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1443 (August 1999), repromulgated LR 26:998 (May 2000), amended LR 29:124 (February 2003), LR 32:1031 (June 2006), LR 33:

Chapter 7. Publishers' Responsibilities

**§701. Requirements for Publishers' Participation in
State Textbook Adoption**

A. - H. ...

I. Awareness sessions or any similar activities are strictly prohibited. Publishers shall not contact teachers, principals, or other school system employees, provide meals, materials, trips, or any other free items in conjunction with a preview or overview of materials being considered for adoption. This does not prohibit publishers from displaying at conferences materials being considered for adoption.

1. Upon request by school personnel at conferences, publishers may provide examination copies if the materials are to be used for the benefit of Louisiana students.

J. - L.1. ...

M. Publishers are to furnish sample materials only at the written request of the local school system textbook adoption coordinator after the state committee review.

1. Samples are to be limited to one sample pack per grade/subject per school, plus one additional set per district. Supervisors may request up to two additional teacher editions per grade/subject.

N. Consequences for policy violations will be imposed.

1. Complaints of possible policy violations shall be in writing. The party against whom the complaint is made will

be afforded an opportunity to respond in writing. After consideration, the agency shall take appropriate action which may include a formal written letter of warning to the publishing company home office, its local representative, the Louisiana Association of Publishers.

2. Repeated violations will be reported to the state Board of Elementary and Secondary Education with department recommendation to dismiss the publisher from current and/or future adoption.

3. Reported violations may also result in delay of or negate contract negotiations.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1446 (August 1999), repromulgated LR 26:1002 (May 2000), amended LR 29:125 (February 2003), LR 32:1031 (June 2006), LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office that has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule effect the functioning of the family? No.

4. Will the proposed Rule effect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments until 4:30 p.m., August 9, 2007, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 1794—State Textbook
Adoption Policy and Procedure Manual**

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

Bulletin 1794 is revised to clarify certain terminology, limit certain promotional activities during the bid process, and impose consequences for policy violations as follows:

§507.F.1.—replaces the term "examination copies" with "samples" as a clarification between materials that are received by a school system for review and adoption, and textbooks that are given for review by those persons outside the adoption process.

§507.F.2.—clarifies and replaces the term "sufficient quantities" with a description of the number of samples per

**Title 28
EDUCATION**

Part III. Proprietary Schools

Chapter 1. General Provisions

§101. Citation and Abbreviation

A. These rules and regulations of the Board of Regents ("Board") govern the licensing and monitoring of proprietary schools operating in Louisiana upon the recommendation and advice of the Proprietary Schools Advisory Commission ("Commission").

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(D)(2) and (E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§103. Definitions

A. *Proprietary Schools*, hereinafter referred to as "school"—any business enterprise operated on a profit or on a nonprofit basis which maintains a place of business within this state, or which sells or offers for sale any course of instruction in this state, either by correspondence using the mails or by any other means of communication, or by personal solicitation, at which place of business such course or course of instruction or study is available through classroom instruction, or both, to a person or persons for the purpose of training or preparing such person(s) for a field of endeavor in a business, trade, technical, or industrial occupation, except as hereinafter excluded. For purposes of this definition, a school that sells or offers for sale any course of instruction in this state through the internet or by correspondence is deemed a school only if it is also domiciled in the state or has a physical presence in the state. Physical presence shall include a mailing address in the state, a solicitor recruiting students in the state, or actual facilities in the state. The definition of a school shall not include:

1. a school or educational institution supported entirely or partly by public funds from either a local or state source. This provision only exempts from the board's regulation those schools that derive direct and significant support from public funds (such as through direct appropriation, and not schools that derive indirect benefit from public funds, such as through contractual payments from governmental agencies);

2. a parochial, denominational or eleemosynary school or institution that provides religious training or theological education; however, any such school or institution that also offers training in a secular field of endeavor shall be subject to the provisions of this Chapter;

3. a school or training program which offers instruction primarily in the field of recreation, health, entertainment or personal enrichment and which does not purport to prepare or qualify persons for employment as determined by the commission;

4. a course or courses of instruction or study sponsored by an employer exclusively for the training and preparation of its own employees when the employer is not primarily engaged in the business of selling or offering

grade/subject that can be requested by a school system to one per school, one per school district, and up to two additional teacher editions when requested by a supervisor.

§507.F.4.—deletes this section which prohibited "examination copies," because §701.I. now permits examination copies to be given in some cases.

§701.I.—prohibits certain promotional activities by vendors with materials under state and/or local bid process.

§701.I.1.—clarifies that the limitations upon promotional activities do not apply to the display of materials under review nor to the dissemination of examination copies to school personnel, if the materials will be used to benefit Louisiana students.

§701.M.—adds a section to the publisher requirements that imposes limits upon the number of samples per grade/subject that can be provided to schools, districts, and/or to the Supervisor. The language parallels similar language under district requirements in Section 507 F.

§701.N.—adds a section to publisher requirements that outlines and imposes consequence for policy violations. The language specifies that complaints must be in writing and allows an opportunity for response to a reported violation. Consequences include a formal letter of warning to the company, recommendations from the Department to the State Board of Elementary and Secondary Education for removal from the current or future adoption process, and/or the delay/negation of contract negotiations.

There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy superintendent
0706#006

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Education
Board of Regents**

Proprietary Schools (LAC 28:III.Chapters 1-21)

Editor's Note: This Notice of Intent is being repromulgated to correct an error upon submission. The original Notice of Intent was published on pages 867-878 of the May 2007 edition of the *Louisiana Register*.

In accordance with the Administrative Procedure Act, R.S. 17:3141 et seq., notice is hereby given that the State Board of Regents for advertisement to repeal the old rules and adopt new rules and regulations to LAC 28, Part III, Proprietary Schools.

course of instruction or study. This includes those businesses that engage in contract training exclusively, and where admission/enrollment is not available to the general public;

5. a course or courses of study or instruction sponsored by a recognized trade, business or professional organization for the instruction of the members of such organization;

6. private colleges and universities which only award a baccalaureate or higher degree and which maintain and operate educational programs for which academic credits are given;

7. a private school which provides a basic academic education comparable to that provided in the public schools of the state;

8. a school offering a program only for children under six years of age;

9. a school which is otherwise regulated and licensed under the laws of this state;

10. a private tutor, teacher or individual engaged in giving private tutoring or lessons to five persons or less in non-school connected activities severed from the regular curriculum of a school as determined by the commission;

11. a day camp;

12. a training program that does not have attendance requirements in place for persons taking the courses and which offers for sale only non-sequential and non-continuous courses of one week duration or less which do not exceed 20 hours of training;

13. a manufacturer-certified training center that offers, at no additional charge to the person receiving training, manufacturer-authorized training that is included as part of the manufacturer's pricing package to prepare persons for certification conferred by the manufacturer and that uses course equipment and materials which are developed and sold by the manufacturer and course instructors and facilities which are certified by the manufacturer;

14. a school or business enterprise which offers instruction to prepare students for tests which are required for entry into a post secondary program of study; or

15. a business which engages in contract training and is reimbursed by the business.

B. *Branch School*—a separate facility established by a main school, under the main school's management, control and supervision. The branch may offer full student services and is under the supervision of a designated on-site employee responsible for the day-to-day operation of the branch. Each branch school shall be separately licensed and bonded.

C. *Commission Staff*—the staff of the board's Proprietary Schools Section, authorized to aid in the administration of the commission's functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.2(5).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§105. Proprietary Schools Law and the Administrative Procedure Act Incorporated

A. R.S. 17:3141.1 et seq., inclusive, known as the Proprietary Schools Law, and R.S. 49:951 et seq., known as the Administrative Procedure Act, in their currently existing form and as may be amended, are hereby incorporated herein. All remedies and procedures available to the public

under these laws, as they pertain to this commission, are hereby made available herein as rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.1, R.S. 49:954.1(A), R.S. 17:3141.3(E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§107. Computation of Time

A. In computing a period of time allowed or prescribed by these rules, by law or by order of the commission or of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday or a day of the weekend, in which event the period runs until the end of the next day, which is not a legal holiday or a day of the weekend.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), La. C.C.P. art. 5059.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 3. Procedures

Subchapter A. General Procedural Rules

§301. Initiation of Proceedings

A. Proceedings. Proceedings for the adoption, amendment, or repeal of a rule may be commenced by the board or commission upon its own initiative or pursuant to reasonable grounds therefore. The commission however, shall initiate procedures to adopt, amend or repeal a rule whenever the attorney general requests same.

B. Process for Initiation. Any interested person may petition the commission requesting the adoption, amendment, or repeal of a rule. The petition shall be filed in the office of the commission located at the Claiborne Building, the Louisiana Board of Regents, Proprietary Schools Section, 1201 N. Third St., Suite 6-200, Baton Rouge, LA 70802 or P.O. Box 3677, Baton Rouge, LA 70821, or such other address in the event the commission relocates, at any time during normal office hours, from 8 a.m. to 4:30 pm, except for legal holidays and the weekend. Within 90 days after submission of a petition, the commission shall either deny the petition in writing stating reasons for the denial, or shall initiate rule-making proceedings in accordance with these rules. Any person whose petition is not deemed by the commission sufficient to warrant the holding of a rule-making proceeding will be promptly notified of that determination and may be given an opportunity to submit additional data.

C. Investigations and Conferences. In connection with any rule-making proceedings, the commission at any time may conduct such investigations, make such studies, and hold such conferences as it may deem necessary.

D. Notice. Prior to the adoption, amendment, or repeal of any rule, the commission shall give notice of its intended action in accordance with R.S. 49:953(A)(1). The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made a timely request of the agency for advance notice of its rule-making proceedings and shall be published at least once in the official state journal.

E. Opportunity to be Heard. Prior to the adoption, amendment, or repeal of any rule, the commission shall

afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing, in accordance with R.S. 49:953(A)(2).

F. Emergency Rules. If the commission finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided above, it may proceed to adopt emergency rules in accordance with R.S. 49:953(B). The Emergency Rule thus adopted may be effective for a period not to exceed 60 days, but the adoption of an identical rule otherwise under these rules is not precluded.

G. Filing, Publication and Effective Date of Rule. The commission shall file with the Office of State Register a certified copy of any rule or regulation adopted upon the completion of a rule-making proceeding and publish the same in the official state journal in accordance with R.S. 49:954. Such rules or regulations shall become effective pursuant to R.S. 49:954(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953, R.S. 49:954.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Subchapter B. Pleadings

§303. Petition to Adopt, Amend or Repeal a Rule

A. Petition to Adopt, Amend, or Repeal a Rule—

1. a petition to adopt, amend, or repeal a rule shall be typed or printed on either standard letter size bond paper or on standard legal size bond paper;

2. the petition shall be dated and shall contain the following:

- a. the title of the pleading (i.e., "petition");
- b. the names of the petitioners;
- c. the names of representatives and legal counselors of such petitioners (if applicable);
- d. all pertinent allegations of fact, data, views, arguments and reasons supporting the action sought by the petition;
- e. a statement or prayer expressing the exact action sought by the petition; and
- f. the signatures of all petitioners, if individual, natural persons, or the signatures of duly qualified representatives of petitioner, if a governmental agency or subdivision or an association of persons;

3. the petition, in setting forth all pertinent allegations of fact, data, views, arguments, and reasons supporting the action sought by the petition, shall contain separate, numbered paragraphs, one for each fact, data, view, argument, and reason set forth;

4. the petition, in expressing the exact action sought by it, shall cite and quote the rule to be adopted, amended, or repealed; and if a rule is sought to be amended, the petition shall quote the rule as it would read after amendment, if it were in fact amended; and

5. only substantial compliance is necessary to meet the requirements of form, and to that end, the provisions of this section shall be liberally construed in favor of accepting the petition.

B. Other Pleadings. Pleadings of any type may be submitted to the commission. They shall be similar in form to that of petitions, except that they may exclude those things peculiar to petitions and shall include those things to which they pertain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Subchapter C. Citation and Production of Evidence for Rule-Making Procedures

§305. Voluntary Submission of Evidence

A. Any interested person may voluntarily submit evidence, testimonial or real, to the commission, such evidence being relevant and material to any issue involved in the adoption, amendment or repeal of any rule, to the corroboration of or to the unreliability or inaccuracy of any witness or other source of evidence submitted, or to the credibility or non-credibility of any witness or other source of evidence submitted, in the same form and manner as otherwise provided herein or by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Subchapter D. Public Hearings

§307. Adjudication

A. Process. In any matter defined as adjudication in R.S. 49:951(1), notice shall be given, hearings held and a decision or order issued, all in accordance with the procedures provided for adjudications in R.S. 49:955-961. Upon the conclusion of the hearing and consideration of all evidence presented, the commission shall submit a recommended decision or order to the board for board approval.

B. Rules of evidence:

1. the commission may admit and give probative effect to evidence which possesses probative value and which is commonly accepted by reasonably prudent men in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. It shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. all evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by all interested persons before being received in evidence; and

3. notice may be taken of judicially recognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the commission's specialized knowledge. All persons who have shown an interest therein shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

C. Admission of Depositions. The presiding officer or any person interested in a proceeding before the commission

may take the depositions of witnesses, within or without the state, in the same manner clothed with all the formalities as provided by law for the taking of depositions. Depositions so taken shall be admissible in any proceeding affected by this Chapter. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the presiding officer in accordance with the rules of evidence provided in this Chapter above.

D. Reopening Hearing and Rehearings. The commission may reopen any hearing for good cause shown, and may grant a rehearing in accordance with R.S. 49:959.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:955, R.S. 49:956, R.S. 49:959.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Subchapter E. Declaratory Orders and Rulings

§309. Declaratory Orders and Rulings

A. The commission shall consider petitions for a declaratory order or ruling as to the applicability of any statutory provision or of any rule or order of the board, submitted pursuant to R.S. 49:962, hold hearings if necessary, and submit a recommended declaratory order or ruling. A petition for a declaratory order or ruling shall contain:

1. the title of the pleading (e.g., "Petition for Declaratory Order");
2. the names of the petitioners;
3. the names of representatives and legal counselors of such petitioners (if applicable);
4. a concise statement of the issue posed, along with citations to the statute, rule or order at issue;
5. a clearly organized statement of all pertinent allegations of fact and data, and if the petitioner takes a specific position on the issue, the arguments and reasons supporting such position;
6. a statement or prayer expressing the exact action sought by the petition;
7. the signatures of all petitioners, if individual, natural persons, or the signatures of duly qualified representatives of petitioner, if a governmental agency or subdivision or an association of persons; and
8. only substantial compliance is necessary to meet the requirements of form, and to that end, the provisions of this section shall be liberally construed in favor of accepting the petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 5. License Requirements

§501. Applications

A. General

1. All applications must comply with the provisions of R.S. 17:3141.4, as well as any applicable provisions of these regulations. All applications concerning licenses are to be submitted to the commission at the following address or such other address in the event the commission relocates:

Louisiana Board of Regents
 Proprietary Schools Section
 Post Office Box 3677
 Baton Rouge, LA 70821-3677

2. All applicable fees, as provided below, must be by company, institutional, certified check, or by money order and must be made payable to the "Louisiana Board of Regent", with the exception of the Student Protection Fund which is to be made payable to the "Student Protection Fund." Except for overpayments toward the Student Protection Fund, no portion of any license fee shall be subject to refund.

B. Initial Application and License Fee. The initial license application fee shall be \$2,000. A payment of \$1,000 toward the student protection fund must be paid along with the license fee.

C. Renewal Application and Fee

1. The annual renewal application fee is based on the school's gross tuition revenues for the previous year as follows.

Under \$50,000	\$500
\$50,000 and up	Greater of \$1,000 or 0.25% of gross tuition income

2. If a complete license renewal application is not received at least 30 days prior to its expiration date, in addition to the renewal fee, there shall be a delinquent fee of \$500. In addition to the renewal application fee and any delinquent fee, a payment to the Student Protection Fund, if applicable, must be made in accordance with R.S. 17:3141.16.

D. License Fee for Solicitors. The annual license fee for each solicitor/sales representative of a school shall be \$100.

E. Reinstatement Licensure Fee. The reinstatement licensure fee for a suspended school shall be \$500.

F. Change of Ownership Application and License Fee. All changes of ownership are contingent upon approval from the board. Applications for a new license must be requested within 10 days of the change of ownership. No license shall be transferable. The application fee is \$2,000. A payment of \$1,000 toward the student protection fund must be made along with the application fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.9(A)(1).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§503. Student Protection Fund

A. First Payment. Initial (new) schools and change-of-ownership schools shall be required to submit their first payment of \$1,000 made payable to the "Student Protection Fund" with their application.

B. Annual Payment. The required annual payments, if applicable, to the Student Protection Fund shall be collected based on the schedule provided in R.S. 17:3141.16.

C. Collection Schedule. Annual payments shall cease when the fund accumulates to \$800,000 but shall resume when the fund drops below \$750,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.16.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§505. Affidavits

A. Applications and renewal applications must be accompanied by affidavits (PSC-9 Form) by each owner, director, instructor, and all office and clerical personnel,

unless previously approved, and Solicitor Permit Applications (PSC-4 Form) by each solicitor containing the information prescribed by Subsection C(11) or R.S. 17:3141.1 (for solicitor renewal, see Section 703). In the case of office and clerical personnel, in lieu of the affidavits of such personnel, the owner may submit an affidavit setting forth the information prescribed by Subsection C(11) of R.S. 17:3141.4 concerning such personnel. Such information shall be based on the owner's investigation and knowledge. For solicitor renewal, see Section 703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4(D).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§507. Surety Bond

A. Each license application must be accompanied by a surety bond in the amount of \$10,000 issued by a surety authorized to do business in Louisiana. The bond must meet the requirements set forth in R.S. 17:3141.5 and the PSC-3 Form. Bond releases and terminations shall be as provided in R.S. 17:3141.5(D) and (E), and suspension of operating license for lack of surety bond coverage is governed by R.S.17:3141.5(F). A school may be exempted from filing a surety bond if it meets all of the following requirements:

1. does not require students to pay tuition for course of study more than one month in advance;
2. has been in continuous operation for at least five years; and
3. has met all the requirements of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.5(D), R.S. 17:3141.5(E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§509. Other Provisions Concerning License

A. A license shall be valid only for the school and shall not include other schools or branches operated by the owner. Each separate location or branch school shall be licensed and bonded. No new courses shall be offered by any school holding a license until it is approved by the commission staff in accordance with procedures to be established by the commission.

B. Each license must be displayed on the premises. No license shall be transferable. In the event of a change of ownership of the school, the license shall be revoked unless the new owner, within 10 days after the change of ownership, requests an application for a license to operate the school.

C. Any person who contemplates the purchase of a school may apply for a license. If the board grants such a license, it shall become a valid license only upon completion of the proposed sale.

D. All licenses shall be renewed annually, not less than 30 days prior to expiration date thereof. Updated information must contain all changes in staff, school programs, etc., including all additions and deletions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.5(B)(C).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§511. Denial of Recommendation of License and Commission Hearing

A. If the commission or commissioner recommends the denial of a license, the commission shall hold a hearing upon

the applicant's request, as provided in R.S. 17:3141.6. The applicant may appear in person or by counsel and may present evidence in support of granting the license. The decision or order resulting from a hearing before the commission is subject to rehearing, reopening, or reconsideration by the commission within 10 days from the date of its entry on the grounds set forth in R.S.49:959 and in accordance with the procedures therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.6.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§513. Revocation of License

A. Licenses may be revoked by the board in accordance with the standards and procedures set forth in R.S.17:3141.8 and statutory and regulatory provisions applicable thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.8.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 7. Personnel Affidavits/Permits

§701. Completion of Affidavits by Non-Instructional Personnel/Instructional Personnel

A. Completion of Affidavit by Non-Instructional Personnel

1. An affidavit (PSC-9 Form) containing the following information must be submitted by the owner of each school (if a corporation, by each officer and by each director) and by each staff person, except solicitors:

- a. full name and address of said person and the capacity in which he/she serves the school;
- b. the city, parish/county, and state of said person's permanent residence and places of residence for the past five years;
- c. the names and addresses of said person's employer or employers for the past five years;
- d. whether or not said person has ever been convicted of a felony for a crime involving fraud or any misdemeanor other than a traffic violation; and
- e. three persons who may be contacted concerning such person's good moral character.

2. In the case of office and clerical personnel, in lieu of affidavits by the office and clerical personnel, the owner may submit the information in the form of an affidavit by the owner, based on the owner's investigation and knowledge. (Refer to §505.)

B. Completion of Affidavit by Instructional Personnel

1. An affidavit (PSC-9 Form) containing the following information must be submitted by each person who will be serving as an instructor at the school:

- a. full name and address of said person and the capacity in which he/she serves the school;
- b. the names and addresses of said person's employer or employers for the past five years; and
- c. three persons who may be contacted concerning such person's good moral character.

2. Minimum qualifications of an instructor include the following:

- a. an instructor in an academically-credentialed area shall have a baccalaureate degree from a bonafide, accredited college or university, and demonstrate appropriate familiarity with the subject matter taught as evidenced by an academic transcript and/or occupational experience;

b. an instructor, in other than an academically-credentialed area, shall have a high school diploma or its equivalent; a license, diploma, certificate, or other degree from a recognized institution or organization in the area taught; and four years of documented occupational experience in the area taught;

c. as used in this Subsection, a "recognized institution or organization" shall mean any bonafide, licensed, chartered or traditionally accredited business or association legally engaged in commerce, education, training, or advocacy. Recognized institutions or organizations shall include, but not be limited to, governmental agencies, labor unions, trade and professional corporations, and retail, financial, and commercial entities. The commission shall reserve the right to use all reasonable means in verifying the validity of credentials;

d. at the board's discretion, the minimum four years experience required for instructors may be waived for those disciplines where teaching credentials are officially certified, licensed, or otherwise approved or granted by a federal agency; and

e. employees employed prior to May 30, 1989 will be exempted from occupational experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.8.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§703. Solicitor Application, Bonds, Renewal, Denial, and Revocation

All forms are prepared and provided by the Commission Staff.

A. Permits and Applications. No person shall sell any course of instruction or solicit students therefore in Louisiana for any school unless he has obtained a solicitor's permit from the commission. A separate permit is required for each school the solicitor represents. A separate application (PSC-4 Form) with required fee and bond must be submitted for each permit sought (i.e., for each school to be represented).

Louisiana Board of Regents
Proprietary Schools Section
Post Office Box 3677
Baton Rouge, LA 70821-3677

B. Bonds. Surety bonds for permits must be in the amount of \$1,000 for each permit issued. The bond must be continuous and must be issued by a solvent surety authorized to do business in Louisiana (see PSC-5 Form). The bond may be supplied as a blanket bond by a school covering each agent, \$1,000 in amount for each agent. This bond is set forth in PSC-6 Form. If a surety cancels a bond (as provided in R.S. 17:3141.9B) then a substitute bond (meeting all conditions for the original) must be furnished and the solicitor's permit shall be in a state of suspension for any period of time not covered by a proper bond.

C. Renewals. Each permit is valid for one year from date of issuance unless revoked and must be renewed not less than 30 days prior to expiration date. At the time of renewal, the owner/director must submit a PSC-4 Form, (unless the owner/director submits written notification of continued employment of solicitor); a \$100 renewal fee (made payable to the "Louisiana Board of Regents"); and proof of continuous bond coverage.

D. Denial of Permits. The commission may deny recommendations of issuance of a permit when proper

grounds exist therefore. The procedures in such cases shall be in accordance with the applicable provision of R.S. 17:3141.1-3141.14 and R.S. 49:951-966.

E. Revocation of Permits. A permit may be revoked for any of the causes set forth in R.S. 17:3141.11. Notice of contemplated revocation must be given in writing at least 30 days prior to the effective date of revocation. At any time within 30 days prior to the revocation, upon request of the solicitor, the commission shall afford the solicitor an opportunity to be heard in person or by counsel. On or before 30 days prior to the date set for hearing, the commission shall notify the aggrieved solicitor of the date and purpose of the hearing and the grounds for the contemplated revocation of the permit. The procedure for revocation shall be in accordance with those prescribed by R.S. 49:951-966 and by R.S.17:3141.1-14 as applicable to such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.8, R.S. 17:3141.9.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 9. Proprietary Schools Applications §901. Initial License or Change of Ownership

A. Please refer to the PSC-14 Form, Proprietary Schools License Requirements Checklist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.5.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§903. License Renewal

A. Renewal letters are mailed to the school owners annually. A license renewal application must be received in this office 30 days prior to the license expiration. If it is not, there shall be a \$500 delinquent fee. Failure to furnish all the renewal information prior to the license expiration date will cause the license to expire. There can be no exceptions or any other extension. The following paperwork must be submitted:

1. a completed PSC-1 Form;
2. the original verification from the bonding company that the surety bonds (\$10,000 for school and \$1,000 per solicitor) are still in effect must accompany the renewal application. The premium period must coincide with the school's licensure period. For example, August 26, 2006-August 26, 2007;
3. a completed PSC-12 form;
4. the renewal fee based upon the school's previous year's gross tuition revenues. The check is to be made payable to the "Louisiana Board of Regents." Refer to the PSC-12 form;
5. financial statements:
 - a. for those schools which participate in Title IV funding, an original set of financial statements that have been audited by an independent Certified Public Accountant licensed in the state of Louisiana, including a current balance sheet and an income statement showing gross tuition receipts for the school's last fiscal year, and in the case of a corporation, signed by an officer of the corporation, sole proprietorship or partnership, signed by the owner(s) or a duly authorized agent acting on behalf of the owner(s), stating that it is true and correct; and
 - b. for those schools which do not participate in Title IV funding, an original set of financial statements that have

been reviewed by a Independent Public Accountant licensed in the state of Louisiana, including a current balance sheet and an income statement showing gross tuition receipts for the school's last fiscal year, and in the case of a corporation or sole proprietorship or partnership, signed by the owner(s) or a duly authorized agent acting on behalf of the owner(s) stating that it is true and correct;

6. an internal compilation reflecting the school's most recent quarter, if the audit/review submitted with the renewal materials, reflects a business year that ended more than 120 days prior to the submission of the renewal materials;

7. a completed PSC-18 Form reflecting the application date listed on the PSC-1 Form;

8. a completed PSC-4 Form for any new solicitor employed with the school. The initial and/or renewal fee is \$100 per solicitor is to be made payable to the "Louisiana Board of Regents;"

9. a completed PSC-9 Form on all instructors and staff employed since the last school renewal, unless previously approved during the year;

10. a current school catalog;

11. a current copy of the Enrollment Agreement/Enrollment Contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.5.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§905. Associate in Occupational Studies (AOS) Degree Application

A. Requirements. An eligible post-secondary school may award a non-academic degree entitled "The Associate in Occupational Studies."

1. The school must be licensed by the board, domiciled in the state of Louisiana, and accredited by a regional or national accrediting agency recognized by the United States Department of Education.

B. The board shall revoke the degree-granting status of any post-secondary school that loses or withdraws its accreditation.

C. No school shall be licensed to award the Associate of Arts or Associate of Science. All advertising, recruiting, and publications shall state clearly that such occupational degree awarded by a post-secondary school is non-academic and does not imply, promise, or guarantee transferability.

D. Each student admitted to an occupational degree program in an accredited post-secondary school shall be required to:

1. have a high school diploma or equivalent; and

2. complete a minimum of two years, four semesters, or six quarters of course work for each occupational degree program.

E. Each AOS degree program shall have a minimum of 75 percent of its course of study in a specific occupational area.

F. Each course of study shall have a minimum of 96 quarter hours if using quarter hours, a minimum of 1800 clock hours if using clock hours, and a minimum of 64 semester hours if using semester hours.

G. Application Enclosures. Enclose one original and eight copies, in binders with tabs, of the following:

1. a completed PSC-1 Form, including the title of the proposed AOS degree program;

2. the completed PSC-11 Form;

3. a blank copy of the diploma that would be awarded upon successful completion of the AOS degree program;

4. a detailed program outline including subject numbers, subject titles, clock hours, quarter hours or semester hours (whichever is used for each subject), and total clock hours, quarter hours, or semester hours (whichever is used for each program);

5. a description of each subject listed on the outline; and

6. an inventory list of equipment/supplies/furnishings available for the AOS degree program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.15.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 11. Student Protection Fund §1101. Policies and Procedures

A. Student Protection Fund Policy

1. The Student Protection Fund is administered by the board and the commission; shall be subjected to audit and review by the legislative auditor's office.

2. Required refunds due from the Student Protection Fund will be provided on a pro rata basis, or other means as appropriate. Prior to any funds being released from the Student Protection Funds, the school's surety bond must be exhausted.

3. For students that have loans, the administrator of the Student Protection Fund will enter into an agreement with the state guaranty agency that any refunds will be allocated as follows:

a. present holder of the loan, whether lender or LOSFA, and any remaining balance to the borrower;

b. for students without loans, appropriate tuition repayment.

4. Administration of the Student Protection Fund is subject to review by the U.S. Department of Education and the state guaranty agency:

a. the commission staff shall retain all records pertaining to the determination of payment or denial of refunds for a period of not less than one year after the final determination has been made;

b. records shall be maintained in an organized manner; and

c. records shall be readily accessible to the U.S. Department of Education and guaranty agency auditors.

B. Student protection fund procedures:

1. the application for tuition recovery (PSC-15 Form), may be submitted after reasonable efforts to compensate the student from the following resources have been exhausted (see PSC-15 Form for instructions):

a. provide teach-out;

b. acquire refund from the school;

c. acquire refund from any other school resources;

and

d. acquire refund from U.S. Department of Education, Closed School Section;

2. lenders holding loans eligible for refunds under the Student Protection Fund may submit the claims to the commission without undertaking any additional collection activity, if the commission determines that the student has not submitted a claim. Submission of a claim by the lender will preclude the student from filing a claim at a later time;

3. refund calculations will be based upon copies of enrollment contracts, student ledger cards, and other pertinent documents submitted by the student; and

4. students and/or lenders applying for relief to the Student Protection Fund will be notified of the status of the request within 60 days of receipt of the application by the commission staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.16.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 13. Advertising Rules for Proprietary Schools **§1301. Advertising Rules**

A. Advertising. All advertising shall forthrightly disclose the purpose of the advertising, that education or training, not a job, is offered, and that the advertiser is a school. Advertising includes any form of public notice however disseminated or utilized. Within this definition would be all publications, communications, promotional items, and efforts which could normally be expected to be seen or encountered by significant numbers of prospective students or their sponsors. Examples include catalogs and other school publications, signs, mailing pieces, radio, television, audio-visual, newspaper, internet or any other form of public notice resulting from the school's recruiting and promotional activities.

B. Solicitation. In the solicitation of students, a school shall not directly, or by implication, misrepresent the services it renders. All advertisements and promotional literature used shall be truthful, informative and constructive; and avoid conveying any false, misleading or exaggerated impressions with respect to the school, its personnel, its courses and services, or the occupational opportunities for its graduates. The true purpose and nature of a school's offerings shall be evident in all advertising. Every advertisement shall constitute to the reader a clear statement of a bonafide offer or announcement made in good faith. It shall be written to its anticipated readership, normally persons unsophisticated in the traditional word usage of the education industry. Therefore, all solicitation must be truthful and conducted with extreme care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.13, R.S. 17:3141.5(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 15. Violations **§1501. Authority, Investigation, And Sanctions**

A. Violations. The following is an illustrative, but not exclusive, list of actions constituting a violation:

1. failure to provide the commission with an item of information required by R.S. 17:3141.1 et seq.;

2. misrepresentation about a school's credentials or accreditation;

3. a false claim or guaranty of employment by a school or solicitor;

4. failure to disclose to a student a necessary requirement for employment;

5. false or misleading advertising;

6. unethical behavior by a solicitor;

7. failure to disclose liability for repayment of a student loan;

8. failure to respond to student complaints as provided in the student complaint rule, R.S. 17:3141.3(D)(2)(b) and 17:3131.3(E);

9. employment of an instructor who is unqualified;

10. unsafe or unhealthy condition of a school;

11. unsafe, unhealthy, or inadequate instructional equipment;

12. failure to teach the number of hours claimed;

13. failure to maintain attendance records and to provide them for inspection;

14. failure to comply with a contractual relationship with a student;

15. failure to release the grades of a student;

16. failure to cooperate with an investigator from the commission;

17. attempting to obtain, obtaining, or renewing a license to operate a school by fraudulent misrepresentation or bribery;

18. placement of classified advertisement under "employment" or other similar categories related to employment rather than "education" or "instruction";

19. upon closure, failure to transfer student records to the board; and

20. failure to comply with the provision of R.S. 17:3141.1 et seq., or any written rule or regulation of the board.

B. Authority and Scope. The definition of "school" for the purpose of this rule shall include a licensed school and school owners, employees, operators, agents and solicitors. The commission shall use the following procedures prior to making a recommendation to the board under R.S. 17:3141.8(A) that a school license should be revoked, canceled, or suspended.

1. Any school found to be in violation of any provision of R.S. 17:3141 et seq., or any other state regulation adopted by the commission pursuant to the Administrative Procedure Act governing the administration or operation of a school may be sanctioned by one or more of the following remedies:

a. restitution and remedial measures;

b. civil money penalties (fines); and

c. revocation, suspension, cancellation, or other restrictions on the license.

2. The commission's assessment of a sanction shall be based on the following considerations:

a. whether the violation or substantially similar violation has previously occurred;

b. the duration of the violation;

c. the severity of the violation;

d. the school's history of compliance with the regulations;

e. what sanction is most likely to bring the school into compliance in the shortest time;

f. the "good faith" exercised by the school in attempting to stay in compliance with the regulations; and

g. such other factors as the commission deems appropriate.

C. Investigation

1. When the commission's staff becomes aware of a violation, it may conduct an onsite investigation of a school.

The inspection may or may not be announced at the discretion of the staff.

2. The agent conducting the investigation shall have the authority to:

- a. privately interview administrators, teachers, solicitors, and students;
- b. inspect school records, documents, catalogs, forms, and advertisements; and
- c. inspect the school facilities and equipment.

3. The school shall cooperate fully with the agent.

4. Within five days of the investigation the agent shall prepare a written report which shall be furnished to the commission staff and the school. The report shall contain:

- a. factual findings relevant to the initial violation;
- b. factual findings of any additional violations;
- c. recommendations of remedial measures to be taken by the school; and
- d. recommendations of any sanctions to be taken by the commission including the commission's petition for an injunction to terminate the violation;
- e. the procedure by which an administrative hearing may be requested.

5. Additional or follow-up visits may be made to the school to monitor violations or to monitor remedial measures taken to correct prior violations.

D. Notice of a Violation

1. When a violation of state statutes or regulations governing the administration or operation of a school has occurred, in accordance with R.S. 17:3141.8, the commission staff shall give notice of the violation to the school's director by certified mail, return receipt, and shall afford the school an opportunity to be heard in person or by counsel.

2. The written notice of the violation shall:

- a. specify the violation(s);
- b. cite the legal authority which establishes the violation(s);
- c. cite any sanctions assessed for each violation;
- d. inform the school's director that the determination of the violation and imposition of the sanction are final, and no further administrative or judicial appeals may be had if a timely appeal is not filed; and
- e. inform the school's director if the violation is regarded as a repeat or continuing violation and the manner in which the sanction will be imposed.

3. If the school requests a hearing, the commission staff shall hold a hearing and take evidence. Strict rules of evidence shall not apply. A tape recording of the hearing shall be made. The school may deny the violation, admit the violation in part and deny it in part, or admit the violation but request a reduction or modification of the sanction imposed. The school may present witnesses or documentary evidence in its defense bearing directly on the violation asserted. The school is limited to one witness to attest to its reputation or to remedial measures it has taken. The commission may consider reputation and remedial measures in mitigation of the sanction. For continued or repeat violations, reputation or remedial measures shall not be considered.

4. The commission staff shall have authority to determine for purposes of making a recommendation to the

board, whether a violation is a repeat or continuing violation:

a. a repeat violation is the recurrence of the same or a substantially similar violation within a period of 12 months;

b. a continuing violation is one that may be reasonably expected to continue until corrective action is taken. A continuing violation may be considered as a repeat violation for each day following the day on which the initial violation is established, until such time as there is evidence establishing a date by which the violation is corrected. A continuing violation may be subject to appropriate sanctions for repeat violations up to the number of days of the violation at the discretion of the commission staff.

5. After holding a hearing, the commission shall submit its findings to the board, and may recommend any of the penalties listed in Paragraph 1501.B.1 and Subsection 1501.F, as it deems appropriate. The commission shall also forward a copy of its findings and recommendation to the school, notify the school of the date of the board meeting when the commission's recommendation will be considered, and advise the school of the opportunity to appear at the board's meeting by person or by counsel and be heard. After due consideration of the commission's recommendation and the school's arguments (if the school presents any arguments) and upon a vote of two-thirds of the authorized membership of the board, the board may revoke, cancel, suspend or restrict the school's license, or impose fines or refunds.

6. A sanction which requires monetary payments, either fines or restitution, shall be paid within a timeframe as determined by the board following its notification.

E. Description of Sanctions

1. Restitution and Remedial Measures. The commission may impose sanctions consisting of, but not limited to, the following measures:

- a. rebate of all or a portion of the tuition to the students;
- b. modification or termination of advertising when unwarranted, false, or misleading claims are made, or placement of corrective ads;
- c. counseling of students when they have been misinformed about a material matter;
- d. the posting of a sign in a prominent position in a school correcting a false representation made to the students;
- e. the distribution of an informational leaflet to the students informing them of their rights;
- f. the inclusion or exclusion of information from the student catalog to correct a misrepresentation;
- g. repairs or modification to a physical facility when health or safety is jeopardized;
- h. repairs or modification to equipment when health or safety or delivery of quality instruction is jeopardized;
- i. an order to terminate a gross violation of the statutes or regulations;
- j. an order to cease the enrollment of new students or to limit enrollment to those students who meet more restrictive admission standards; and
- k. modification of the curricula or methods of instruction.

2. Civil Money Penalties (Fines). The commission has the authority to impose a fine up to \$500 for each violation.

Repeat or continuing violations may be assessed separate fines up to \$500 for each day of violation. After a fine is imposed, the commission may allow a specified period of time for the correction of the violation. If the violation is corrected, the commission may waive the payment of the fine. The school may be given the opportunity to demonstrate compliance before the fine becomes final. A violation for which a fine is waived shall still be counted for repeat and continued violations. The right to assess civil fines is not merged in other remedies, and the commission may impose other sanctions in addition to the fines.

3. Revocation of License. The commission may recommend the revocation of a school's license to the board.

F. Appeal Procedure. Any sanction may be administratively appealed as long as the appeal is timely filed in accordance with R.S. 17:3141.8(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(D)(2), R.S. 17:3141.8, R.S. 17:3141.14, R.S. 17:3141.18.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 17. Student Complaint Procedure

§1701. Policies, Conciliation, Conference, Hearing, and Review

A. General Policies

1. The purpose of this complaint procedure is to provide an effective and efficient method by which students may resolve their complaints with the commission staff under the jurisdiction of the board;

2. the commission staff shall prepare and provide a copy of the complaint procedure to each licensed school; and

3. each school shall include in either their catalog or enrollment agreement the following:

a. complaints relative to actions of school officials may be made and must be in writing, addressed to the Louisiana Board of Regents, Proprietary Schools Section, P.O. Box 3677, Baton Rouge, LA 70821-3677, 225/342-4253. Such complaints may be made only after the student has unsuccessfully attempted to resolve the matter with the school by having first filed a written and signed complaint with that school's officials. Any student who wishes to review the student complaint procedure may make a request for a copy of the procedure, in writing, addressed to the Louisiana Board of Regents, Proprietary Schools Section, P.O. Box 3677, Baton Rouge, LA 70821-3677, (225)342-4253.

B. Conciliation—

1. any student who believes he/she has been aggrieved by actions of school officials shall complain in writing to the commission staff at Louisiana Board of Regents, Proprietary Schools Section, Post Office Box 3677, Baton Rouge, LA 70821-3677, 225/342-4253, only after having first filed a written and signed complaint with the school officials;

2. if the complaint is not resolved, the student may submit a written request for assistance to resolve the matter with the school after having first filed a written and signed complaint with that school's officials;

3. copies of this initial notice of the complaint will be sent to the school and to the complainant. A copy must also be retained in the commission staff files;

4. the notice of complaint will request that the student and the school meet and discuss the complaint in a

conciliation effort and/or communicate in writing within 10 days after receipt of the notice;

5. if after 10 days, the complaint has not been satisfactorily resolved, the student may request further assistance from the commission staff; and

6. the commission staff may, at its discretion, eliminate the conciliation procedure where a student has already contacted the school regarding the problem and may proceed directly to the mediation conference.

C. Mediation Conference

1. If the student advises the Section that no satisfactory resolution has been achieved with the school through the conciliation procedure, at that point the commission staff may forward the complaint and all associated materials to the Louisiana Division of Administrative Law.

2. If no amicable resolution is achieved in the mediation process, either party may request, within seven days, a hearing before the commission. Within five working days following a request for a hearing, the commission staff shall send written notice to the parties containing the following:

- a. an explanation of the hearing procedures; and
- b. the date, time and place for the hearing.

D. Hearing:

1. a public hearing shall be held before the commission. The parties shall be given 15 days notice in advance of the hearing, including the time, place and nature of the hearing and a statement of the alleged complaints to be the subject of the hearing;

2. the hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act; and

3. the commission shall prepare a report of its findings and recommendations and submit it to the board. The board shall render a decision accompanied by written reasons within 30 days following the conclusion of the hearing. This decision will be transmitted to all parties with a notice of the right to judicial review.

E. Judicial Review. Either party may appeal to the Nineteenth Judicial District in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.3(D)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 19. Student Records

§1901. General Policies

A. All schools shall maintain all student records as required under R.S. 17:3141.16(D)(3). All student records shall include, but are not limited to enrollment agreements, attendance records, financial and academic transcripts, and exit interview.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§1903. Transfer of Student Records

A. A school must make arrangements to transfer all student records to the Commissioner of Higher Education at the commission's address within 10 days of closing. If any of the records have been seized or confiscated by legal authorities, the board shall request the authorities for documentation regarding seizure of the records. However,

the school remains responsible for turning over unseized records. Any closed school, that maintains student files and electronic files shall make arrangements to electronically transfer such records to the board. The records shall be prepared in the following manner:

1. they shall be filed in alphabetical order;
2. each container will be clearly marked "official records" and will show the alphabetical order within the container (e.g., aa to bc); and
3. the containers shall be sealed to prevent loss or damage and marked in succession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

§1905. Penalties

A. Failure to maintain and/or turn over student records as provided above will result in the assessment of penalties.

B. If necessary, a claim shall be made against the surety bond posted at the time of submission of the license application to satisfy any penalties for failure to maintain and/or turn over student records pursuant to R.S. 17:3141.5(D)(1)(b)(iv).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Chapter 21. Exceptions

§2101. Board Authority

A. The board retains the authority to waive or make exceptions to any provision of these regulations if it deems such waiver or exception to be in the public interest. This authority shall be exercised by majority vote of the Louisiana Board of Regents pursuant to request by a school, any interested party, recommendation of the commission, or upon its own motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.3(D)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested Parties may submit written comments until 4:30 p.m. July 10, 2007, to Larry Tremblay, Board of Regents, P.O. Box 3677, Baton Rouge, LA 70821-3677.

Larry Tremblay
Deputy Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Proprietary Schools

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

There are no estimated implementation costs or savings to state or local governmental units as a result of these changes. The rule changes reflect a complete rewrite and update of the rules to reflect current BOR policy and procedures. There is no fiscal impact because the changes are technical in nature and do not fundamentally alter the regulation of proprietary schools in Louisiana.

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

This rule update has no effect on revenue collections of state or local governmental units. The rule update included no changes to fees, fines, or other charges.

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

This rule update has no costs and/or economic benefits to directly affected persons or non-governmental groups. The rule update included no changes to fees, fines, or other charges.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no effect on competition and employment.

Larry Tremblay
Deputy Commissioner
0706#039

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

2006 Incorporation by Reference for Air Quality
(LAC 33:III.507, 2160, 3003, 5116,
5122, 5311, and 5901)(AQ284ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.507, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ284ft).

This proposed rule is identical to federal regulations found in 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, and 70.6.(a) (July 1, 2006); revisions to 40 CFR Parts 60, 61, and 63, in 72 FR 27437-27443 (May 16, 2007); and 40 CFR Part 63, Subpart HH, in 72 FR 26 (January 3, 2007), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA

70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

The proposed rule incorporates by reference (IBR) into the Air regulations, LAC 33:Part III, the following federal regulations in the July 1, 2006, edition of the Code of Federal Regulations (CFR): 40 CFR Part 51, Appendix M, Capture Efficiency Test Procedures; 40 CFR Part 60, New Source Performance Standards; 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP); 40 CFR Part 63, NESHAP for Source Categories; 40 CFR Part 68, Chemical Accident Prevention and Minimization of Consequences; and 40 CFR 70.6(a), Part 70 Operating Permits Program. The rule also incorporates revisions to 40 CFR Parts 60, 61, and 63, in 72 FR 27437-27443 (May 16, 2007). No new Subparts for 40 CFR Part 60, 61, or 63 are added in the IBR of the July 1, 2006, edition of the CFR, or revisions on May 16, 2007. Any exception to the IBR is explicitly listed in the regulations. The rule also incorporates by reference the federal provisions for area (minor) sources in NESHAP from Oil and Natural Gas Facilities, 40 CFR Part 63, Subpart HH, using the Federal Register notice for the final federal rule, 72 FR 26 (January 3, 2007). This federal rule was not included in the July 1, 2006, edition of the CFR. In order for Louisiana to maintain equivalency with federal regulations, certain regulations in the most current CFR, July 1, 2006, must be adopted into the Louisiana Administrative Code (LAC). This rulemaking is necessary to maintain delegation authority granted to Louisiana by the Environmental Protection Agency. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2006. Upon issuance of the permit, the Part 70 source shall be operated in compliance

with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43—Capture Efficiency Test Procedures

[Editor's Note: This Subchapter was moved and renumbered from Chapter 61 (December 1996).]

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2006, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:809 (May 2006), LR 33:

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2006, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 60, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of

Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2006, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 61, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443.

40 CFR Part 61	Subpart/Appendix Heading

[See Prior Text in Subpart A – Appendix C]	

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:809 (May 2006), LR 33:

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2006, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 63, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443, applicable to major sources.

B. - C.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:

Chapter 53. Area Sources of Toxic Air Pollutants Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2006, and specifically listed in the following table, are hereby incorporated by reference as they apply to area sources in the state of Louisiana. Also incorporated by reference are the revisions to 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Facilities, applicable to area sources, promulgated on January 3, 2007, in the *Federal Register*, 72 FR 26, and revisions to 40 CFR Part 63, Subpart A as promulgated on May 16, 2007, in the *Federal Register*, 72 FR 27437-27443, applicable to area sources.

40 CFR Part 63	Subpart/Appendix Heading

[See Prior Text in Subpart A – Subpart T]	
Subpart X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
Subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Facilities
Subpart EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

[See Prior Text in Subpart LLL – Subpart IIIII]	

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:810 (May 2006), LR 33:

**Chapter 59. Chemical Accident Prevention and
Minimization of Consequences**

Subchapter A. General Provisions

**§5901. Incorporation by Reference of Federal
Regulations**

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2006.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:810 (May 2006), LR 33:

A public hearing will be held on July 25, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ284ft. Such comments must be received no later than July 25, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ284ft. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0706#017

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Use or Disposal of
Sewage Sludge and Biosolids
(LAC 33:VII.301 and IX.107, 2301, 2313,
7301, 7303, 7305, 7307, 7309, 7311,
7313, 7395, 7397, and 7399)(OS066)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:VII.301 and IX.107, 2301, 2313, 7301, 7303, 7305, 7307, 7309, 7311, 7313, 7395, 7397, and 7399 (Log #OS066).

This rule removes the provision that restricted the usage of the sewage sludge regulations until such time that the department received delegation for the Sewage Sludge Management Program from the Environmental Protection Agency (EPA). The EPA has had the program implemented in the state since 1993 and will continue to implement the program at the federal level through the Standards for the Use or Disposal of Sewage Sludge regulations in 40 CFR Part 503, in accordance with Section 405(d) and (e) of the Clean Water Act, until such time as the state assumes delegation of the Sewage Sludge Management Program from EPA. Updating and clarification of the regulations are necessary to fully implement the rule at the state level in Louisiana. The regulations are being moved from LAC 33:IX.Chapter 69, and associated appendices in Chapter 71, to LAC 33:IX.Chapter 73. Amendments include restrictions as to what materials can be prepared with sewage sludge; revisions to sewage sludge treatment facility site requirements; revisions to the financial assurance requirements; provisions to allow the land application of a mixture of sewage sludge and grease pumped or removed from a food service establishment; certification of preparers of sewage sludge and land applicators of biosolids; provisions for closure of treatment facilities that were utilized for the treatment of sanitary wastewater or sewage sludge; and permit application submittal deadlines. This rule promulgates provisions of Emergency Rule OS066E6 for the permitting and regulating of sewage sludge use and disposal practices. The basis and rationale for this rule are to provide for the proper regulating of sewage sludge activities for better protection of human health and the environment.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§301. Exempted Waste

A. All *solid wastes*, as defined by the Act and these regulations, are subject to the provisions of these regulations, except as follows:

1. wastes regulated under other authority and not processed or disposed of in solid waste facilities permitted under these regulations, including but not limited to, the following wastes:

a. agricultural-crop residues, aquacultural residues, silvicultural residues, and other agricultural wastes stored, processed, or disposed of on the site where the crops are grown or that are stored, processed, or disposed in accordance with a best management practice plan that has been provided to the Office of Environmental Services and approved in writing by the Department of Agriculture, and within the jurisdiction of the Department of Agriculture;

b. mining overburden, spoils, tailings, and related solid wastes within the jurisdiction of the Department of Natural Resources, Office of Conservation;

c. produced-waste fluids and muds resulting from the exploration for or production of petroleum and geothermal energy, and all surface and storage waste facilities incidental to oil and gas exploration and production, within the jurisdiction of the Department of Natural Resources, Office of Conservation;

d. uncontaminated dredge or earthen excavation spoil;

e. solid wastes while they are stored at residences or commercial establishments and regulated by local ordinance, or within the jurisdiction of the Department of Health and Hospitals;

f. uncontaminated residues from beneficiation of earthen material;

g. uncontaminated storm water and uncontaminated noncontact cooling water;

h. infectious waste or other hospital or clinic wastes that are not processed or disposed of in solid waste processing or disposal facilities permitted under these regulations; and

i. sewage sludge (including domestic septage) that is generated, treated, processed, composted, blended, mixed, prepared, transported, used, or disposed of in accordance with LAC 33:IX.Chapter 73. Sewage sludge and domestic septage not managed in accordance with LAC 33:IX.Chapter 73 shall be managed in accordance with these regulations; and

2. wastes excluded by the definition of *solid waste* in the Act and/or as otherwise specified in the Act, including:

a. hazardous wastes subject to regulation under R.S. 30:2171 et seq.;

b. solid or dissolved material in domestic sewage (such as domestic-oxidation ponds), except separated sludges;

c. solid or dissolved materials in irrigation-return flow;

d. discharges that are downstream from point sources subject to permit under R.S. 30:2074, except waste contained in solid waste facilities prior to the final discharge point, provided, however, that:

i. wastewaters in existing ditches that are downstream of a designated internal state or federal wastewater discharge point are exempt from the definition of *solid waste* if they require no further treatment to meet final state or federal wastewater discharge point permit limits or if they require only pH adjustment to meet final pH permit limits, or suspended solids settling specifically to meet final total suspended solids permit limits;

ii. wastewaters in existing ditches upstream of a designated final state or federal wastewater discharge point that require no further treatment to meet final state or federal permit limits or that only require pH adjustment to meet final pH permit limits, or solids settling specifically to meet total suspended solids permit limits, are exempt from the definition of *solid waste*;

iii. solids or sludges in ditches are exempt from the definition of *solid waste* until such time as such solids or sludges are removed from the ditches for disposal, provided however, that this exclusion from the definition of solid waste only applies to solids and sludges derived from wastewaters described in Clauses A.2.d.i and ii of this Section;

iv. the administrative authority reserves the right to withdraw the exemption for wastewaters in Clauses A.2.d.i and ii of this Section if the wastewaters contribute to groundwater contamination;

e. source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); and

f. compost produced by an individual for his own beneficial use, as provided in R.S. 30:2416.G.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 1. General Provisions

§107. Definitions

* * *

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

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1857 (October 2006), LR 33:

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 23. Definitions and General LPDES Program Requirements

§2301. General Conditions

A. The conditions and requirements in this Chapter apply only to facilities and discharges within the scope of coverage of the NPDES program and to permits issued in accordance with the assumption of the NPDES program. Provisions of the federal regulations addressing sewage sludge use and disposal have been retained and state terminology has been substituted for federal terminology as appropriate. Unless specifically indicated in LAC 33:IX.Chapter 73 as being applicable, requirements relative to a state sewage sludge management program in LAC 33:IX.Chapters 23-71 are not applicable until the Department of Environmental Quality (DEQ) receives the sewage sludge management program authority, in accordance with 40 CFR Part 501 under the NPDES program. Until DEQ receives the sewage sludge management program authority, in accordance with 40 CFR Part 501 under the NPDES program, the requirements relative to the state sewage sludge management program are those in LAC 33:IX.Chapter 73. In accordance with R.S. 40:4(A)(6), plans and specifications for a sanitary wastewater treatment facility are reviewed and approved by the state health officer or his designee.

B. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:230 (February 2004), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:

§2313. Definitions

A. The following definitions apply to LAC 33:IX.Chapters 23-35. Terms not defined in this Section have the meaning given by the CWA.

* * *

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

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:722 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2755 (December 2000), LR 28:464 (March 2002), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Note: Former Chapter 69 has moved to Subpart 3, Chapter 73.

Note: §6901 has moved to §7301.

Note: §6903 has moved to §7303.

Note: §6905 has moved to §7305.

Note: §6907 has moved to §7307.

Note: §6909 has moved to §7309.

Note: §6911 has moved to §7311.

Note: §7131 has moved to §7397.

Note: §7133 has moved to §7399.

Note: §7135 has moved to §7395.

Subpart 3. Louisiana Sewage Sludge and Biosolids Program

Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids [Formerly Chapter 69]

Subchapter A. Program Requirements

§7301. General Provisions [Formerly §6901]

A. Purpose and Applicability

1. Purpose

a. This Chapter establishes standards for the use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage (hereafter referred to collectively as *sewage sludge* for the purposes of this Chapter), biosolids, and grease that was pumped or removed from a food service facility and mixed with sewage sludge.

b. The standards established in this Chapter include:

i. general requirements and other requirements for bulk biosolids, general management practices and other management practices for bulk biosolids, pollutant limits, pathogen and vector attraction reduction requirements, and optional standards;

ii. sampling and monitoring requirements, recordkeeping and reporting requirements, specific exclusions, and prohibitions and restrictions regarding the use and disposal of sewage sludge and biosolids; and

iii. the siting, operation, and financial assurance requirements for commercial preparers of sewage sludge or land appliers of biosolids.

c. This Chapter establishes requirements for the person who prepares sewage sludge that is disposed in a landfill.

d. In addition, this Chapter contains specific prohibitions and restrictions regarding the use and disposal of sewage sludge and biosolids.

2. Applicability

a. This Chapter applies to any person who:

i. prepares sewage sludge or biosolids, including the dewatering and solidification of sewage sludge;

ii. applies biosolids to the land;

iii. prepares sewage sludge, including the dewatering and solidification of sewage sludge, that is disposed in a landfill;

iv. owns/operates a surface disposal site; and

v. owns/operates a sewage sludge incinerator.

b. This Chapter also applies to:

i. biosolids that are applied to the land and sewage sludge that is disposed at a surface disposal site or at a landfill;

ii. sewage sludge fired in a sewage sludge incinerator, a sewage sludge incinerator and the exit gas from a sewage sludge incinerator, land where biosolids are applied, and a surface disposal site; and

iii. grease that is pumped or removed from a food service facility and is mixed with sewage sludge.

B. General Definitions. The following terms used in this Chapter shall have the meanings listed below, unless the context clearly indicates otherwise, or the term is specifically redefined in a particular Section.

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

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

Apply Biosolids or Biosolids Applied to the Land—land application of biosolids.

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

Beneficial Use—the use of biosolids for the purpose of soil conditioning or crop or vegetative fertilization in a manner that does not pose a danger of adverse effects upon human health or the environment or cause any deterioration of land surfaces, soils, surface waters, or groundwater.

Biosolids—sewage sludge, or material derived from sewage sludge, that is nonhazardous, has a PCB concentration of less than 50 mg/kg of total solids (dry weight), and is prepared to meet one of the pollutant requirements of LAC 33:IX.7303.E, one of the pathogen requirements in LAC 33:IX.7309.C, and one of the vector attraction reduction requirements in LAC 33:IX.7309.D.

Bulk Biosolids—biosolids that are not sold or given away in a bag or other container for application to the land.

Class B Biosolids—biosolids that do not meet one or more of the following requirements:

a. the pollutant concentrations in Table 3 of LAC 33:IX.7303.E;

b. the pathogen requirements in LAC 33:IX.7309.C.1;

c. one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e; and/or

d. a PCB concentration of less than 10 mg/kg of total solids (dry weight basis).

Class I Sludge Management Facility—for the purposes of this Chapter:

a. any *publicly owned treatment works (POTW)* or *privately owned sanitary wastewater treatment facility (POSWTF)*, as defined in this Subsection, regardless of its ownership, that is used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. any person who prepares sewage sludge or biosolids, including a commercial preparer of sewage sludge and pumper of sewage sludge who prepares sewage sludge or biosolids;

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

d. an applier of biosolids to the land, including a commercial land applier of biosolids.

Commercial Preparer of Sewage Sludge—any person who prepares sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the applier.

Commercial Land Applier of Biosolids—any person who applies biosolids to the land for monetary profit or other financial consideration and the biosolids were obtained from a facility or facilities not owned by or associated with the person.

Container—any stationary or portable device in which sewage sludge or biosolids are stored or transported.

Contaminate an Aquifer—to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR 141.62(b) to be exceeded in the groundwater, or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration exceeds the maximum contaminant level for nitrate in 40 CFR 141.62(b).

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

Domestic Septage—liquid or solid material removed from a septic tank, holding tank or similar device, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. *Domestic septage* does not include liquid or solid material removed from a septic tank, holding tank or similar device, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater, and does not include grease removed from a grease trap at a *food service facility*, as defined in this Subsection.

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

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

Exceptional Quality Biosolids—biosolids that are nonhazardous and meet the ceiling concentrations in Table 1 of LAC 33:IX.7303.E, the pollutant concentrations in Table 3 of LAC 33:IX.7303.E, the pathogen requirements in LAC 33:IX.7309.C.1, and one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e, and that have a PCB concentration of less than 10 mg/kg of total solids (dry weight).

Feed Crop—a crop produced primarily for consumption by animals.

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

Fiber Crops—crops such as flax and cotton.

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

Food Service Facility—any facility that prepares and/or packages food or beverages for sale or consumption, on- or off-site, with the exception of private residences. *Food*

service facilities include, but are not limited to, food courts, food manufacturers, food packagers, restaurants, grocery stores, bakeries, lounges, hospitals, hotels, nursing homes, churches, schools, and other similar facilities.

Free Air Space, n—air-filled pore volume of an as-received compost material. Express *free air space* as a percentage, volume of *free air space* per unit volume of compost (% v v, ±0.1 %).

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

Groundwater—water below the land surface in the saturated zone.

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

Industrial Wastewater—wastewater generated in a commercial or industrial process.

Institution—the building or buildings that are utilized to house an established organization or foundation, especially one dedicated to public service or to culture. An *institution* includes, but is not limited to, an established school, hospital, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, place of worship, or restaurant/food establishment.

Land Application—the beneficial use of biosolids by either spraying or spreading onto the land surface, injection below the land surface, or incorporation into the soil.

Material Derived from Sewage Sludge—biosolids that are produced when sewage sludge is prepared with other solid waste materials, feedstocks, supplements, and industrial sludges that are approved to be prepared with sewage sludge under these regulations.

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

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

Person Who Prepares Sewage Sludge—the person who generates sewage sludge during the treatment of domestic sewage in a treatment works, the person who treats sewage sludge, or the person who derives a material from sewage sludge.

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

Pollutant Limit—a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the

amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

Private Land Applier—anyone who applies biosolids to the land for private benefit purposes, where the land application is not for monetary profit or other financial consideration, and either the applier did not generate or prepare the sewage sludge or material derived from sewage sludge, or the facility or facilities from which the biosolids were obtained are not owned by or associated with the *private land applier*.

Privately Owned Sanitary Wastewater Treatment Facility (POSWTF)—a privately owned treatment works that is utilized to treat sanitary wastewater and is not a *publicly owned treatment works (POTW)*, as defined in this Subsection.

Publicly Owned Treatment Works (POTW)—a *treatment works*, as defined by Section 212 of the Clean Water Act, that is owned by a *state* or *municipality*, as defined by Section 502(3) and (4) of the Clean Water Act. This includes all devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW; and the *municipality*, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Pumper of Sewage Sludge—a person who removes sludge from a sanitary wastewater treatment facility; domestic septage from a residential septic tank, mechanical treatment plant, or dump station for recreational vehicles and watercrafts or vessels; residuals from a portable toilet; or grease from a food service facility that is mixed with sewage sludge.

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

Responsible Official—a person who meets any of the following criteria:

a. for a corporation—a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities;

b. for a partnership or sole proprietorship—a general partner or the proprietor, respectively; or

c. for a municipality or a state, federal, or other public agency—either a principal executive officer or ranking elected official. For the purposes of this Subpart, a principal executive officer of a federal agency includes the

chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

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

Sludge-Only Facility—any facility whose methods of sewage sludge use or disposal are subject to regulations promulgated in accordance with Section 405(d) of the Clean Water Act, and that is required to obtain a permit under Subsection D of this Section.

Storage Facility—an area of land or constructed facility committed to hold sewage sludge or biosolids until the material may be used or disposed at on- or off-site locations.

Storage of Sewage Sludge or Biosolids—the temporary placement of sewage sludge or biosolids in a container, storage facility, tank, or directly on the land. *Storage of sewage sludge or biosolids* does not pertain to a container or tank that is utilized for the *treatment of sewage sludge*, as defined in this Subsection.

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

Surface Disposal—a use or disposal of sewage sludge on the land that does not meet the criteria of *land application*, as defined in this Subsection.

Tank—a stationary device designed to contain an accumulation of sewage sludge or biosolids that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic), which provide structural support.

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

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

TSCA—Toxic Substances Control Act.

C. Compliance Period

1. Compliance with Standards. Except as otherwise specified in this Chapter and in Paragraph C.3 of this Section, compliance with the standards in this Chapter shall be achieved as expeditiously as practicable, but in no case later than February 19, 1994. When compliance with the standards requires construction of new pollution control facilities, compliance with the standards shall be achieved as expeditiously as practicable, but in no case later than February 19, 1995.

2. Frequency of Monitoring, Recordkeeping, and Reporting. The requirements for frequency of monitoring, recordkeeping, and reporting in this Chapter for total hydrocarbons in the exit gas from a sewage sludge incinerator are effective February 19, 1994, or if compliance with the operational standard for total hydrocarbons in this Chapter requires the construction of new pollution control facilities, February 19, 1995. All other requirements for frequency of monitoring, recordkeeping, and reporting in this Chapter are effective on July 20, 1993.

3. Compliance with Requirements

a. Unless otherwise specified in LAC 33:IX.7311, compliance with the requirements in LAC 33:IX.7311.B, beginning with the definition of *average daily concentration* through the definition of *wet scrubber*, LAC 33:IX.7311.D.3, 4, and 5, F.5, 6, 7, 8.d, and 10, G.1.a and c, G.3, and H.2.e shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in LAC 33:IX.7311, compliance with the revised requirements shall be achieved as expeditiously as practicable, but no later than September 4, 2001.

b. Compliance with the requirements in Paragraphs G.2, 3, and 4 of this Section shall be achieved as follows.

i. A facility presently meeting all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph G.2 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

ii. A facility that does not meet all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph G.2 of this Section by December 30, 2005.

iii. All facilities must comply with the requirements in Paragraphs G.3 and 4 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

D. Permits and Permitting Requirements

1. Except as exempted in Paragraph D.2 of this Section, no person shall prepare sewage sludge or biosolids, prepare sewage sludge and dispose of the prepared sewage sludge in a permitted landfill, apply biosolids to the land, or own or operate a sewage sludge incinerator without first obtaining a permit in accordance with the deadlines set forth in Subparagraphs D.1.a-c of this Section. The permit shall identify and regulate the specific use, disposal, storage, and treatment of sewage sludge described in the permit application.

a. As of December 30, 2005, the following permitting requirements apply.

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

ii. Those persons who have been issued a standard solid waste permit under LAC 33:Part VII for the use, disposal, treatment, or processing of sewage sludge, with the exception of a standard solid waste permit issued for a type of *surface disposal*, as defined in Subsection B of this Section, may continue operations under the standard solid waste permit until such time as a permit has been reissued

under these regulations by the administrative authority or for a period not to exceed five years, whichever is less. This time period may be reduced by the administrative authority if deemed necessary for the protection of human health and/or the environment.

iii. Those persons who have been issued a standard solid waste permit for a type of *surface disposal*, as defined in Subsection B of this Section, shall comply with the requirements in Subparagraph C.3.b of this Section.

b. As of June 1, 2006, facilities not addressed under Subparagraph D.1.a of this Section shall apply for a permit as follows.

i. All sanitary wastewater treatment facilities that receive domestic septage and/or portable toilet waste into their systems shall apply for a permit within 180 days of June 1, 2006.

ii. All treatment facilities that are for the sole purpose of preparing sewage sludge or sewage sludge mixed with grease that is pumped or removed from a food service facility shall apply for a permit within 180 days of June 1, 2006.

iii. All treatment facilities that prepare sewage sludge for land application, and all land appliers of biosolids who are not presently operating under an effective standard solid waste permit, shall apply for a permit within 180 days of June 1, 2006.

iv. All major sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than three years from June 1, 2006.

v. All minor sanitary wastewater treatment facilities that do not receive domestic septage and/or portable toilet waste into their systems shall apply for a permit as expeditiously as practicable, but in no case later than five years from June 1, 2006.

c. At least 180 days prior to the expiration of the permit described in Clause D.1.b.ii of this Section, the owner/operator of the facility shall submit an application for permit issuance under this Chapter if the owner/operator intends to continue operations after that date.

d. A person who prepares sewage sludge or land-applies biosolids shall use the Sewage Sludge and Biosolids Use or Disposal Permit application form. The owner/operator of a sewage sludge incinerator shall apply for a permit in accordance with LAC 33:III.Chapter 5 and shall utilize both the Air Quality Permit Application and the Sewage Sludge and Biosolids Use or Disposal Permit application forms. The forms can be accessed through the department's website or by contacting the Office of Environmental Services.

e. Except as allowed in this Paragraph, all permits issued in accordance with these regulations shall be effective for a period not to exceed five years. The standard five-year permit period may be reduced to a period of less than five years if deemed necessary by the administrative authority for the protection of human health and/or the environment.

2. Exempt Status for Those Applying Biosolids to the Land

a. A person who applies bagged *biosolids*, as defined in Subsection B of this Section, to the land shall be exempted from obtaining a permit.

b. A person who applies bulk biosolids to the land, if the biosolids were obtained from a facility that is permitted to treat sewage sludge to an Exceptional Quality biosolids level, shall be exempted from obtaining a permit.

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

3. A person who prepares sewage sludge, a person who applies biosolids to the land, and the owner and/or operator of a sewage sludge incinerator who desires to maintain a permit shall obtain adequate training and certification in the processing, treatment, land application, and incineration of sewage sludge.

a. To maintain certification, a minimum of 16 contact hours of continuous education are required for each certificate held during the previous two-year certification period.

b. Classes, seminars, conferences, or conventions used for units shall be approved by the administrative authority.

4. Closure requirements for sanitary wastewater treatment facilities that were utilized for the preparation of sewage sludge, and sewage sludge disposal ponds/lagoons complying with the requirements of Subparagraph C.3.b of this Section, are as follows.

a. In closing a facility that was utilized for sanitary wastewater treatment or for the disposal of sewage sludge, the liquid portion must be removed in a manner that meets the requirements of LAC 33:IX.Chapters 23-71.

b. The use or disposal options for the closure of a facility that was utilized for the treatment of sanitary wastewater or the disposal of sewage sludge shall consist of:

i. removal and disposal of the remaining biosolids in a permitted landfill;

ii. obtaining an Exceptional Quality biosolids certification without further soil or site restrictions for the material; or

iii. obtaining approval for land application of the material as Class B biosolids with soil or site restrictions.

c. For removal and disposal in a permitted landfill, a closure plan shall be submitted to the Office of Environmental Services prior to site closure. The closure plan shall include, but not be limited to, the following information:

i. the name, mailing address, physical address, and contact person of the facility that is proposed for closure;

ii. an aerial photograph showing the location of the facility that is proposed for closure;

iii. the amount of sewage sludge that will be removed and disposed at a permitted landfill;

iv. the name, location, and contact person at the site where the sewage sludge will be disposed; and

v. a sampling and analysis plan for the sewage sludge, which shall include:

(a) either a schematic drawing or an aerial photograph that indicates where the samples will be taken;

(b) the lab methods to be utilized;

(c). the name of the laboratory where the samples will be analyzed; and

(d). any other information the department may require.

d. Approval or disapproval of the closure plan required in Subparagraph D.4.c of this Section shall be granted by the administrative authority after receipt and review of the plan.

e. For an Exceptional Quality biosolids certification without further soil or site restrictions, a request shall be submitted to the Office of Environmental Services. The request shall include, but not be limited to, the following information.

i. A sampling and analysis plan shall be submitted to the administrative authority in accordance with Subsection I of this Section. The sewage sludge shall be sampled and analyzed in a laboratory that is certified by the state of Louisiana. The minimum sampling and analysis requirements are as follows:

(a). toxicity characteristic leaching procedure (TCLP)—one composite sample;

(b). pollutants listed in Table 1 of LAC 33:IX.7303.E—at least four separate, random, representative samples of pollutants listed in the table;

(c). pathogens—

(i). the sewage sludge shall be sampled and analyzed in accordance with the requirements in Subsection I of this Section;

(ii). results of the analysis must indicate that fecal coliform levels are 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis);

(iii). if the reduction of pathogens is a necessity, it shall be achieved by utilizing either Exceptional Quality Biosolids—Alternative 2, as described in LAC 33:IX.7309.C.1.d, Exceptional Quality Biosolids—Alternative 3, as described in LAC 33:IX.7309.C.1.e, Exceptional Quality Biosolids—Alternative 4, as described in LAC 33:IX.7309.C.1.f, or Exceptional Quality Biosolids—Alternative 5, as described in LAC 33:IX.7309.C.1.g;

(iv). for analysis of fecal coliform or *Salmonella sp.*, a minimum of four separate, random, representative samples shall be utilized. The geometric mean of the separate samples collected and analyzed must be reported. The samples must be analyzed by using Part 9221 E of “Standard Methods for the Examination of Water & Wastewater” for fecal coliform and Part 9260 of “Standard Methods for the Examination of Water and Wastewater” for *Salmonella sp.*;

(d). vector attraction reduction—first, utilize the procedure described in LAC 33:IX.7309.D.2.d or e.ii. Proof of vector attraction reduction shall then be made by the collection and analysis of four separate, random, representative samples for the indicator parameter of the selected procedure (i.e., pH or Percent Solids). If specific sampling and analysis methods are listed in Subsection I of this Section for vector attraction reduction, then the methods listed must be used for the determination of vector attraction reduction;

(e). PCBs—one composite sample; and

(f). total nitrogen, total nitrates, total phosphorus, total potassium, and pH—one composite sample from four or more separate samples collected from the treatment facility or from each cell of an oxidation pond, lagoon, or surface impoundment.

ii. Results of the analyzed samples, along with QA/QC documentation, must be submitted to the administrative authority, along with the following additional information:

(a). the name of the facility that utilized the treatment facility;

(b). the LPDES (sanitary wastewater discharge) permit number for the treatment facility;

(c). the design capacity of the treatment facility (If the facility was an oxidation pond, include the size of the pond (in acres) and the number of cells of the pond, e.g., 1-cell, 2-cell, or 3-cell.);

(d). the approximate tons of sewage sludge to be disposed;

(e). the location of the facility, delineated on an aerial photograph;

(f). the future plans for the site where the treatment plant is located;

(g). the demographics within the area of the facility (businesses, hospitals, nursing homes, day-care centers, schools, walk-in clinics, etc.);

(h). potable water wells within a 1-mile radius of the facility, including private and public potable water wells, designated on an aerial photograph; and

(i). the name of the drinking water aquifer.

iii. After receipt and review of the results of the laboratory analysis and the additional information required in Clause D.4.e.ii of this Section, a decision shall be rendered by the administrative authority regarding Exceptional Quality biosolids certification.

f. For closure through land application of the sewage sludge as Class B biosolids, a Sewage Sludge and Biosolids Use or Disposal Permit application form must be submitted to the Office of Environmental Services utilizing the application form that can be accessed on the department's website or by contacting the Office of Environmental Services.

5. Environmental Impact Supplementary Information. In addition to the requirements of this Chapter, all Sewage Sludge and Biosolids Use or Disposal Permit application forms must include a response to each of the following:

a. a detailed discussion demonstrating that the potential and real adverse environmental effects of the proposed facility have been avoided to the maximum extent possible;

b. a cost-benefit analysis that balances the environmental impact costs against the social and economic benefits of the facility and demonstrates that the latter outweigh the former;

c. a discussion and description of possible alternative projects that would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits;

d. a detailed discussion of possible alternative sites that would offer more protection to the environment than the

proposed facility site without unduly curtailing non-environmental benefits; and

e. a discussion and description of mitigating measures that would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits.

E. Sewage Sludge Disposed in a Landfill

1. A landfill where sewage sludge is disposed must possess a legal and effective permit.

2. A person who disposes of sewage sludge in a landfill shall provide the necessary information to the owner/operator of the landfill where the sewage sludge is to be disposed to assure that the landfill will be in compliance with its permit requirements.

3. The person who prepares sewage sludge that is disposed in a landfill shall provide the following to the Office of Environmental Services on an annual basis, or at a frequency designated in the permit:

a. proof that the sewage sludge is being disposed at an approved landfill, by furnishing the name, address, and permit number of the landfill; and

b. copies of all records of sampling and laboratory analyses of the sewage sludge for hazardous characteristics or the presence of PCBs, of the results of the Liquid Paint Filter Test (if required in the permit), and of any other analysis required by the owner/operator of the landfill.

F. Reserved.

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

1. Use or Disposal of Sewage Sludge

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

b. No person shall use or dispose of sewage sludge or biosolids except in accordance with the requirements in this Chapter.

2. Surface Disposal Prohibited. *Surface disposal*, as defined in Subsection B of this Section, is prohibited as a use or disposal method of sewage sludge or biosolids.

3. Storage of Sewage Sludge or Biosolids

a. Except as allowed in Subparagraph G.3.b of this Section, the *storage of sewage sludge or biosolids*, as defined in Subsection B of this Section, is allowed for a period not to exceed six consecutive months when:

i. it is necessary for the upgrade, repair, or maintenance of a treatment works or sludge-only facility, or for agricultural storage purposes when the sewage sludge or biosolids are to be used for *beneficial use*, as defined in Subsection B of this Section;

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

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

b. An extension for storage for greater than six months may be granted by the administrative authority if storage for the extended period will have no adverse affect on human health or the environment.

c. A request for an extension for storage for greater than six months must be submitted in writing to the Office of Environmental Services at least 60 days prior to the

expiration of the first six-month storage period and shall include, but not be limited to, the following information:

i. the name and address of the person who prepared the sewage sludge or biosolids;

ii. the name and address of the person who either owns or leases the land where the sewage sludge or biosolids are to be stored, if different from the person who prepared the sewage sludge;

iii. the location, by either street address or latitude and longitude, of the land;

iv. an explanation of why the sewage sludge or biosolids need to remain on the land;

v. an explanation of why human health and the environment will not be affected;

vi. the approximate date and length of time the sewage sludge or biosolids will be stored on the land; and

vii. the final use and disposal method after the storage period has expired.

d. The administrative authority shall make a determination as to whether or not the information submitted is complete and shall issue the determination within 30 days of having received the request.

i. If the information is deemed incomplete, the administrative authority shall issue a notice of deficiency. The commercial preparer or land applier of sewage sludge shall have 45 days, thereafter, to respond to the notice of deficiency.

ii. If the information is deemed complete, the administrative authority shall make and issue a determination to grant or deny the request for the storage of sewage sludge within 30 days after deeming the information complete.

4. Use of Ponds or Lagoons to Treat Sewage Sludge

a. The use of a pond or lagoon is allowed for the *treatment of sewage sludge*, as defined in Subsection B of this Section, only after a permit has been granted under these regulations and the applicable air and water discharge permits have been applied for and granted by the administrative authority.

b. The person who makes use of a pond or lagoon for the treatment of sewage sludge shall:

i. provide documentation to the Office of Environmental Services that indicates the final use or disposal method for the sewage sludge;

ii. apply for the appropriate permit for the chosen final use or disposal in accordance with this Chapter; and

iii. provide documentation by a qualified groundwater scientist to the Office of Environmental Services that indicates the area where the pond or lagoon is located and if it will adequately protect against potential groundwater contamination either by natural soil conditions or by a constructed soil or synthetic liner that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less, and adequately protect from the potential to *contaminate an aquifer*, as defined in Subsection B of this Section.

5. Solid wastes other than those listed below are prohibited from being prepared with sewage sludge and must be disposed of in the manner provided in LAC 33:VII.Subpart 1:

a. residential and commercial food waste;

b. twigs, branches, leaves, crushed or chipped wood, logs, or trees;

- c. wood chips or sawdust;
 - d. ground or crushed cardboard boxes;
 - e. paper;
 - f. flyash, kiln dust, or other solid waste material that has been approved by the Environmental Protection Agency for the alkaline treatment/stabilization of sewage sludge; and
 - g. industrial sludges that are shown to contain only the pollutants that are listed in Table 1 of LAC 33:IX.7303.E and are demonstrated to be of benefit to the soil and/or crops through soil conditioning and/or crop fertilization, or are utilized as a form of alkaline treatment/stabilization of the sewage sludge.
6. Materials prohibited from being prepared with sewage sludge are as follows:
- a. hazardous waste;
 - b. materials listed in Table 1 of LAC 33:IX.7301.G; and
 - c. other material whose use has a potential to adversely affect human health or the environment, as determined by the administrative authority.

Table 1 of LAC 33:IX.7301.G	
Materials Prohibited from Preparation with Sewage Sludge	
Antifreeze	Pesticides
Automotive (lead-acid) batteries	Photographic supplies
Brake fluid	Propane cylinders
Cleaners (drain, oven, toilet)	Treated wood containing the preservatives CCA and/or PCP
Gasoline and gasoline cans	Tubes and buckets of adhesives, caulking, etc.
Herbicides	Swimming pool chemicals
Household (dry cell) batteries	Unmarked containers
Oil-based paint	Used motor oil

7. A material prepared with sewage sludge must be sampled and analyzed on an annual basis to determine if the material is nonhazardous by a hazardous waste determination in accordance with LAC 33:Part V. Results of the sampling and analysis must be submitted to the administrative authority on an annual basis.

8. Sewage sludge composting operations shall not be located on airport property unless an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration. If an exemption or approval is granted by the U. S. Department of Transportation's Federal Aviation Administration to allow a sewage sludge composting operation to be located on airport property, the location restrictions in LAC 33:IX.7305.B.1.h and i for off-airport property operations shall apply.

9. The use of raw or untreated sewage sludge as daily, interim, or final cover at a municipal solid waste landfill is prohibited. The use of treated sewage sludge as daily, interim, or final cover at a municipal solid waste landfill is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.7303.

10. Except as exempted in LAC 33:IX.7303.M, sewage sludge mixed with grease shall be disposed of in a permitted landfill and shall not be:

- a. introduced into any part of a treatment works, including its collection system; or
- b. applied to the land.

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

H. Exclusions

1. Co-Firing of Sewage Sludge

a. Except for the co-firing of sewage sludge with *auxiliary fuel*, as defined in LAC 33:IX.7311.B, this Chapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

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

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

3. Hazardous Sewage Sludge. This Chapter does not establish requirements for the use or disposal of sewage sludge or a material derived from sewage sludge that is hazardous in accordance with LAC 33:Part V.

4. Sewage Sludge Containing PCBs. This Chapter does not establish requirements for the use or disposal of sewage sludge containing polychlorinated biphenyls (PCBs) that are regulated by the TSCA.

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

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

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

8. Treatment Processes. This Chapter does not establish requirements for processes used to treat *domestic sewage*, as defined in Subsection B of this Section. This Chapter establishes requirements regarding processes used to treat sewage sludge.

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

I. Sampling and Analysis

1. Sampling

a. The permittee shall collect and analyze representative samples of sewage sludge or biosolids that are applied to the land and sewage sludge fired in a sewage sludge incinerator at the frequency specified in the permit.

b. The permittee shall create and maintain records of sampling and monitoring information for the period

specified in the permit. The sampling and monitoring records shall include:

- i. the date, exact place, and time of sampling or measurements;
- ii. the individual(s) who performed the sampling or measurements;
- iii. the date(s) analyses were performed;
- iv. the individual(s) who performed the analysis;
- v. the analytical techniques or methods used; and
- vi. the results of such analysis.

2. Methods. The materials listed below are incorporated by reference in this Chapter. The materials are incorporated as they exist on the date of approval, and notice of any change in these materials will be published in the *Louisiana Register*. They are available for inspection at the Office of the Federal Register, 7th Floor, Suite 700, 800 North Capitol Street, NW, Washington, DC, and at the Office of Water Docket, Room L-102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies may be obtained from the standard producer or publisher listed in the regulation. Information regarding other sources of these documents is available from the Department of Environmental Quality, Office of Environmental Services. Methods in the materials listed below (or in 40 CFR Part 136) shall be used to analyze samples of sewage sludge.

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

b. Fecal Coliform. Part 9221 E, "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or EPA Method 1680 (<http://www.epa.gov/waterscience/methods/biosolids/EPA.Method.1680.July2006.pdf>) for *Exceptional Quality biosolids* and Part 9221 E or Part 9222 D "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or EPA Method 1680 or 1681 (<http://www.epa.gov/waterscience/methods/biosolids/EPA.Method.1681.July2006.pdf>) for *Class B Biosolids*.

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

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

e. *Salmonella sp.* Bacteria. Part 9260 D, "Standard Methods for the Examination of Water and Wastewater,"

18th Edition, 1992, American Public Health Association, 1015 15th Street, NW, Washington, DC 20005; or EPA Method 1682 (<http://www.epa.gov/waterscience/methods/biosolids/EPA.Method.1682.July2006.pdf>); or Kenner, B.A. and H.P. Clark, "Detection and Enumeration of Salmonella and Pseudomonas Aeruginosa," *Journal of the Water Pollution Control Federation*, Vol. 46, No. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§7303. Land Application [Formerly §6903]

A. Applicability

1. This Section applies to:
 - a. any person who prepares sewage sludge or biosolids that are applied to the land;
 - b. any person who applies biosolids to the land;
 - c. sewage sludge or biosolids that are applied to the land; and
 - d. the land on which sewage sludge or biosolids are applied.

2. The general requirements in Subsection C of this Section, the other requirements for bulk biosolids in Subsection F of this Section, the general management practices in Subsection D of this Section, and the other management practices for bulk biosolids in Subsection G of this Section do not apply when bulk *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, are applied to the land and the preparer has received and maintained a permit to prepare sewage sludge as Exceptional Quality biosolids in accordance with requirements in Subsection L of this Section.

3. The administrative authority may apply any or all of the general requirements in Subsection C of this Section, the other requirements for bulk biosolids in Subsection F of this Section, the general management practices in Subsection D of this Section, and the other management practices for

bulk biosolids in Subsection G of this Section to the bulk biosolids in Paragraph A.2 of this Section on a case-by-case basis after determining that any or all of the requirements or management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the bulk biosolids to the land.

4. The general requirements in Subsection C of this Section and the general management practices in Subsection D of this Section do not apply if the biosolids sold or given away in a bag or other container are *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, and the preparer has received and maintained a permit to prepare sewage sludge as Exceptional Quality biosolids in accordance with the requirements in Subsection L of this Section.

5. The administrative authority may apply any or all of the general requirements in Subsection C of this Section and the general management practices in Subsection D of this Section to the biosolids in Paragraph A.4 of this Section on a case-by-case basis after determining that the requirements or the management practices are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the biosolids to the land.

B. Special Definitions

Agricultural Land—land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

Agronomic Rate—

a. the whole biosolids application rate (dry weight basis) designed:

i. to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; and

ii. to minimize the amount of nitrogen in the biosolids that are not utilized by the crop or vegetation grown on the land and either passes below the root zone to the groundwater or gets into surface waters during storm events;

b. agronomic rate may be extended to include phosphorus to application sites that are located within the drainage basin of water bodies that have been determined by the administrative authority to be impaired by phosphorus.

Annual Pollutant Loading Rate—the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

Annual Whole Biosolids Application Rate—the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

Annual Whole Sludge Application Rate—repealed.

Cumulative Pollutant Loading Rate—the maximum amount of an inorganic pollutant that can be applied to an area of land.

Forest—a tract of land thick with trees and underbrush.

Monthly Average—the arithmetic mean of all measurements taken during the month.

Pasture—land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

Public Contact Site—land with a high potential for contact by the public. This includes, but is not limited to,

public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

Range Land—open land with indigenous vegetation.

Reclamation Site—drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

C. General Requirements

1. When a person who prepares sewage sludge provides the sewage sludge to another person who prepares the sewage sludge, the person who receives the sewage sludge shall comply with the requirements in this Chapter.

2. The person who provides the sewage sludge shall provide the person who receives the sewage sludge with the following information:

a. the name, mailing address, and location of the facility or facilities of the person providing the sewage sludge;

b. the total dry metric tons being provided per 365-day period; and

c. a description of any treatment processes occurring at the providing facility or facilities, including blending, composting, or mixing activities and the treatment to reduce pathogens and/or vector attraction reduction.

3. No person shall apply biosolids to the land except in accordance with the requirements in this Chapter.

4. Biosolids shall not be applied to the land until the site has been approved by the administrative authority with a finding that the land application site is a legitimate beneficial use site.

D. General Management Practices

1. Land Application Restrictions

a. Biosolids applied to agricultural land, forest, a public contact site, or a reclamation site shall only be applied at a whole biosolids application rate that is equal to or less than the agronomic rate for the biosolids, unless, in the case of a reclamation site, otherwise specified by the permitting authority.

b. Biosolids shall be applied to the land in accordance with the slope requirements in Table 1 of LAC 33:IX.7303.D.

c. Biosolids having a concentration of PCBs equal to or greater than 10 mg/kg of total solids (dry wt.) must be incorporated into the soil regardless of slope.

2. Buffer Zones. When biosolids are applied to agricultural land, forest, or a reclamation site, buffer zones shall be established as follows for each application area, unless otherwise specified by the administrative authority.

a. For all sites, the following buffer zone requirements apply:

i. a private potable water supply well—300 feet, unless special permission is granted by the private potable water supply owner;

ii. a public potable water supply well, surface water intake, treatment plant, or public potable water supply elevated or ground storage tank—300 feet, unless special permission is granted by the Department of Health and Hospitals; and

iii. a property boundary—100 feet, unless special permission is granted by the property owner(s).

b. For new or first-time-permitted sites, the following buffer zone requirements apply:

i. an established *institution*, as defined in LAC 33:IX.7301.B—1,000 feet, unless special permission is granted by the responsible official of the established institution. The permission must be in the form of a notarized affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the application area be located less than 200 feet from an institution; and

ii. an occupied residential home or structure—500 feet, unless special permission is granted by the owner and/or lessee of the occupied residential home or structure. The permission must be in the form of a notarized affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall land application of sewage sludge be conducted less than 200 feet from the occupied residential home or structure.

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

4. Nutrient Management Plan and Soil Sampling. The person who applies biosolids to agricultural or forest land shall:

a. provide proof to the administrative authority that a full nutrient management plan has been developed for the agricultural or forest land where the biosolids are applied. The full nutrient management plan shall be developed by the Natural Resource Conservation Service, a certified soil scientist, a certified crop advisor, or a local LSU Agricultural Center Cooperative Extension Service agent; or

b. sample the soil at the site or sites where biosolids are land-applied on an annual basis, or, if double cropping is practiced, prior to the planting of each crop, for the following parameters:

- i. total Kjeldahl nitrogen;
- ii. total nitrates;
- iii. total nitrites;
- iv. total phosphorus;
- v. total potassium; and
- vi. pH.

5. Biosolids Sold or Given Away in a Bag or Other Container

a. Biosolids sold or given away in a bag or other container shall not be applied to the land at a rate that would cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded.

b. The permittee shall either affix a label to the bag or other container holding biosolids that are sold or given away for application to the land, or provide an information sheet to the person who receives biosolids sold or given away in a bag or other container for application to the land. The label or information sheet shall contain the following information:

- i. the information required in Clauses L.1.f.i-viii of this Section; and
- ii. the annual whole biosolids application rate that does not cause any of the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded.

Table 1 of LAC 33:IX.7303.D	
Slope Limitations for Land Application of Biosolids	
Slope Percent	Application Restriction
0-3	None, except drainage to prevent standing water shall be provided.
3-6	A 100-foot vegetated runoff area should be provided at the down slope end of the application area if a liquid is applied. Measures should be taken to prevent erosion.
6-12	Liquid material must be injected into the soil. Solid material must be incorporated into the soil if the site is not covered with vegetation. A 100-foot vegetated runoff area is required at the down slope end of the application area for all applications. Measures must be taken to prevent erosion. Terracing may be required if deemed a necessity by the administrative authority to prevent runoff from the land application site and erosion.
>12	Unsuitable for application unless terraces are constructed and a 200-foot vegetated buffer area with a slope of less than 3 percent is provided at the down slope edge of the application area and the material is incorporated (solid material) and injected (liquid material) into the soil. Measures must be taken to prevent runoff from the land application site and to prevent erosion.

E. Pollutant Limits

1. Sewage Sludge and Biosolids

a. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.7303.E.

b. If bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site, either:

i. the cumulative loading rate for each pollutant in the biosolids shall not exceed the cumulative pollutant loading rate for the pollutant in Table 2 of LAC 33:IX.7303.E; or

ii. the concentration of each pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of LAC 33:IX.7303.E.

c. If biosolids are applied to a lawn or a home garden, the concentration of each pollutant in the biosolids shall not exceed the ceiling concentrations in Table 1 of LAC 33:IX.7303.E and the pollutant concentrations for each pollutant listed in Table 3 of LAC 33:IX.7303.E, and the concentration of PCBs must be less than 10 mg/kg of total solids (dry wt.).

d. If biosolids are sold or given away in a bag or other container for application to the land, either:

i. the concentration of each pollutant in the biosolids shall not exceed the ceiling concentration for the pollutant in Table 1 of LAC 33:IX.7303.E and the concentration for the pollutant in Table 3 of LAC 33:IX.7303.E, and the concentration of PCBs must be less than 10 mg/kg of total solids (dry wt.); or

ii. the product of the concentration of each pollutant in the biosolids and the annual whole biosolids application rate for the sewage sludge shall not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.7303.E to be exceeded, and the concentration of PCBs must be less than 10 mg/kg of total solids (dry wt.). The procedure used to determine the annual whole biosolids application rate is presented in LAC 33:IX.7397. Appendix K.

e. The administrative authority may require that the biosolids meet more stringent pollutant limits or limits for additional pollutants than those listed in the Tables of LAC 33:IX.7303.E on a case-by-case basis after determining that the more stringent pollutant limits or limits for additional pollutants are needed to protect human health and the environment from any reasonably anticipated adverse effect that may occur from the application of the biosolids to the land.

2. Pollutant Concentrations and Loading Rates—
Biosolids
Ceiling Concentrations

Table 1 of LAC 33:IX.7303.E Ceiling Concentrations	
Pollutant	Ceiling Concentration (milligrams per kilogram) ¹
Arsenic	75
Cadmium	85
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

¹Dry weight basis

b. Cumulative Pollutant Loading Rates

Table 2 of LAC 33:IX.7303.E Cumulative Pollutant Loading Rates	
Pollutant	Cumulative Pollutant Loading Rate (kilograms per hectare)
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

c. Pollutant Concentrations

Table 3 of LAC 33:IX.7303.E Pollutant Concentrations	
Pollutant	Monthly Average Concentration (milligrams per kilogram) ¹
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

¹Dry weight basis

d. Annual Pollutant Loading Rates

Table 4 of LAC 33:IX.7303.E Annual Pollutant Loading Rates	
Pollutant	Annual Pollutant Loading Rate (kilograms per hectare per 365-day period)
Arsenic	2.0

Cadmium	1.9
Copper	75
Lead	15
Mercury	0.85
Nickel	21
Selenium	5.0
Zinc	140

F. Other Requirements for Bulk Biosolids

1. The person who prepares bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids with written notification of the concentration, on a dry weight basis, of total nitrogen, ammonia (as N), nitrates, potassium, and phosphorus in the bulk biosolids.

2. When a person who prepares bulk sewage sludge provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk sewage sludge shall provide the person who applies the bulk biosolids with notice and necessary information to comply with the requirements in this Chapter.

3. The person who applies bulk biosolids to the land shall provide the owner or leaseholder of the land on which the bulk biosolids are applied with notice and necessary information to comply with the requirements in this Chapter.

4. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E to the land without first contacting the administrative authority to determine if bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E have been applied to the land since July 20, 1993.

5. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E to agricultural land, forest, a public contact site, or a reclamation site if any of the cumulative pollutant loading rates in Table 2 of LAC 33:IX.7303.E has been reached.

6. If bulk biosolids have not been applied to a site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of LAC 33:IX.7303.E may be applied to the site in accordance with Clause E.1.b.i of this Section.

7. If bulk biosolids have been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with Clause E.1.b.i of this Section.

8. If bulk biosolids have been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with Clause E.1.b.i of this Section.

G. Other Management Practices for Bulk Biosolids

1. Bulk biosolids shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act or its designated critical habitat.

2. Bulk biosolids shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is

flooded, frozen, or snow-covered so that the bulk biosolids enter a *wetland* or other *waters of the state*, as defined in LAC 33:IX.2313, except as provided in a permit issued in accordance with Section 402 or 404 of the CWA or LAC 33:IX.Chapters 23-71.

3. Bulk biosolids shall not be applied to agricultural land, forest, or a reclamation site that is 33 feet (10 meters) or less from any *waters of the state*, as defined in LAC 33:IX.2313, unless otherwise specified by the permitting authority.

4. Bulk biosolids shall not be applied to the land if it would affect a property that either is listed on, or is eligible for listing on, the National Historic Register.

H. Operational Standards—Pathogens and Vector Attraction Reduction

1. Pathogens

a. The Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 or the Class B pathogen requirements and site restrictions in LAC 33:IX.7309.C.2 shall be met when bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site.

b. The Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 shall be met when biosolids are applied to a lawn or a home garden.

c. The Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 shall be met when biosolids are sold or given away in a bag or other container for application to the land.

2. Vector Attraction Reduction

a. One of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g shall be met when bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e shall be met when biosolids are applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e shall be met when biosolids are sold or given away in a bag or other container for application to the land.

I. Frequency of Monitoring

1. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.7303.E; the frequency of monitoring for pathogen density requirements in LAC 33:IX.7309.C.1 and 2.b; and the frequency of monitoring for vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e shall be the frequency specified in Table 1 of LAC 33:IX.7303.I.

Table 1 of LAC 33:IX.7303.I	
Frequency of Monitoring—Land Application	
Amount of Biosolids ¹ (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

¹Either the amount of bulk biosolids applied to the land, for sale, or give-away in a bag or other container for application to the land (dry weight basis).

2. After the biosolids have been monitored for two years at the frequency in Table 1 of LAC 33:IX.7303.I, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in LAC 33:IX.7309.C.1.e.ii and iii.

J. Recordkeeping

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. Additional Recordkeeping

a. The recordkeeping requirements for the person who prepares the sewage sludge or biosolids that are land applied and meet the criteria in Paragraphs A.2 and 4 of this Section are those indicated in Paragraph L.9 of this Section.

b. For bulk biosolids that are applied to agricultural land, forest, a public contact site, or a reclamation site and that meet the pollutant concentrations in Table 3 of LAC 33:IX.7303.E, the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1, and the vector attraction reduction requirements in either LAC 33:IX.7309.D.2.f or g:

i. the person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(a) the concentration of each pollutant listed in Table 3 of LAC 33:IX.7303.E;

(b) a description of how the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 are met; and

(c) the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk biosolids to the land shall develop the following information and shall retain the information for five years:

(a) a description of how the general management practices in Paragraphs D.1-4 of this Section and the other management practices for bulk biosolids in Subsection G of this Section are met for each site on which bulk biosolids are applied;

(b) a description of how the vector attraction reduction requirements in either LAC 33:IX.7309.D.2.f or g are met for each site on which bulk biosolids are applied; and

(c) the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4, the other management practices for bulk biosolids in LAC 33:IX.7303.G, and the vector attraction reduction requirement in [insert either LAC 33:IX.7309.D.2.f or g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

c. For bulk biosolids that are applied to agricultural land, forest, a public contact site, or a reclamation site and that meet the pollutant concentrations in Table 3 of LAC 33:IX.7303.E, the Class B pathogen requirements in LAC 33:IX.7309.C.2, and the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g:

i. the person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 3 of LAC 33:IX.7303.E;

(b). a description of how the Class B pathogen requirements in LAC 33:IX.7309.C.2 are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g is met; and

(d). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in LAC 33:IX.7309.C.2 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk biosolids to the land shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Paragraphs D.1-4 of this Section and the other management practices for bulk biosolids in Subsection G of this Section are met for each land site on which bulk biosolids are applied;

(b). a description of how the site restrictions in LAC 33:IX.7309.C.2.e are met for each land site on which bulk biosolids are applied;

(c). when the vector attraction reduction requirement in either LAC 33:IX.7309.D.2.f or g is met, a description of how the requirement is met;

(d). the date bulk biosolids are applied to each site; and

(e). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4, the other management practices for bulk biosolids in LAC 33:IX.7303.G, the site restrictions in LAC 33:IX.7309.C.2.e, and the vector attraction reduction requirement in [insert either LAC 33:IX.7309.D.2.f or g] was prepared for each site on which bulk biosolids are applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

d. For bulk biosolids applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.7303.E and that meet the Exceptional Quality biosolids or Class B pathogen requirements in LAC 33:IX.7309.C, and the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g:

i. the person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:

(a). the concentration of each pollutant listed in Table 1 of LAC 33:IX.7303.E in the bulk biosolids;

(b). a description of how the Exceptional Quality biosolids or Class B pathogen requirements in LAC 33:IX.7309.C are met;

(c). a description of how one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g is met; and

(d). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in [insert either LAC 33:IX.7309.C.1 or 2] and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the bulk biosolids to the land shall develop the following information, retain the information in Subclauses J.2.d.ii.(a)-(g) of this Section indefinitely, and retain the information in Subclauses J.2.d.ii.(h)-(m) of this Section for five years:

(a). the location, by either street address or latitude and longitude, of each land site on which bulk biosolids are applied;

(b). the number of hectares or acres in each site on which bulk biosolids are applied;

(c). the date bulk biosolids are applied to each land site;

(d). the cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of LAC 33:IX.7303.E in the bulk biosolids applied to each land site, including the amount in Paragraph F.7 of this Section;

(e). the amount of biosolids (i.e., tons or metric tons) applied to each land site;

(f). a description of how the information was obtained in order to comply with Subsection F of this Section;

(g). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in LAC 33:IX.7303.F was prepared for each land site on which bulk biosolids were applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

(h). a description of how the general management practices in Paragraphs D.1-4 of this Section and the other management practices for bulk biosolids in Subsection G of this Section are met for each land site on which bulk biosolids are applied;

(i). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4 and the other management practices for bulk biosolids in LAC 33:IX.7303.G was prepared for each land site on which bulk biosolids were applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel

properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(j). a description of how the site restrictions in LAC 33:IX.7309.C.2.e are met for each land site on which Class B bulk biosolids are applied;

(k). the following certification statement when the bulk biosolids meet the Class B pathogen requirements in LAC 33:IX.7309.C.2:

"I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in LAC 33:IX.7309.C.2.e for each land site on which Class B biosolids were applied was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(l). if the vector attraction reduction requirements in either LAC 33:IX.7309.D.2.f or g are met, a description of how the requirements are met; and

(m). the following certification statement when the vector attraction reduction requirement in either LAC 33:IX.7309.D.2.f or g is met:

"I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in [insert either LAC 33:IX.7309.D.2.f or g] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

e. For biosolids sold or given away in a bag or other container for application to the land meeting the requirement at Clause E.1.d.ii of this Section, the Exceptional Quality biosolids pathogen requirements at LAC 33:IX.7309.C.1, and the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e:

i. the person who prepares the biosolids that are sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

(a). the annual whole biosolids application rate for the biosolids that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded;

(b). the concentration of each pollutant listed in Table 4 of LAC 33:IX.7303.E in the biosolids;

(c). a description of how the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 are met;

(d). a description of how one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e is met;

(e). a description of how the general management practice in Subparagraph D.5.b of this Section was met; and

(f). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practice in LAC 33:IX.7303.D.5.b, the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1, and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this

information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

ii. the person who applies the biosolids that are given away or sold in a bag or other container to the land that is agricultural land, forest, a public contact site, or a reclamation area shall develop the following information and shall retain the information for five years:

(a). a description of how the general management practices in Paragraphs D.1-4 and Subparagraph D.5.a of this Section are met for each site on which the biosolids given away or sold in a bag or other container are applied; and

(b). the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the general management practices in LAC 33:IX.7303.D.1-4 and D.5.a was prepared for each site on which biosolids given away or sold in a bag or other container are applied under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment."

K. Reporting

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall submit the information in Paragraph J.1 of this Section to the administrative authority on February 19 of each year.

2. Additional Reporting Requirements

a. Reporting requirements for a person who prepares *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, from sewage sludge, having a permit to do so, are as indicated in Paragraph L.10 of this Section.

b. All other *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that apply bulk biosolids to the land and are required to obtain a permit under LAC 33:IX.7301.D, shall submit the information in Paragraph J.2 of this Section, for the appropriate requirements, to the administrative authority as follows.

i. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per year, the reporting period and the report due date shall be as specified in Table 1 of LAC 33:IX.7303.K.

Table 1 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period (Once per Year)	Report Due Date
January - December	February 28

ii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per quarter (four times per year), the reporting period and the report due date shall be as specified in Table 2 of LAC 33:IX.7303.K.

Table 2 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period ¹ (Once per Quarter)	Report Due Date
January, February, March	August 28
April, May, June	
July, August, September	February 28
October, November, December	

¹Separate reports must be submitted for each monitoring period.

iii. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per 60 days (six times per year), the reporting period and the report due date shall be as specified in Table 3 of LAC 33:IX.7303.K.

Table 3 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period ¹ (Once per 60 Days)	Report Due Date
January, February	June 28
March, April	
May, June	
July, August	October 28
September, October	
November, December	February 28
¹ Separate reports must be submitted for each monitoring period.	

iv. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.I of once per month (12 times per year), the reporting period and the report due date shall be as specified in Table 4 of LAC 33:IX.7303.K.

Table 4 of LAC 33:IX.7303.K	
Reporting—Land Application	
Monitoring Period ¹ (Once per Month)	Report Due Date
January	May 28
February	
March	
April	August 28
May	
June	
July	November 28
August	
September	
October	February 28
November	
December	
¹ Separate reports must be submitted for each monitoring period.	

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

L. Requirements for Persons who Prepare Sewage Sludge as Exceptional Quality Biosolids

1. A person who prepares sewage sludge as Exceptional Quality biosolids must prepare the sewage sludge in a manner that will assure that the sewage sludge meets all of the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, and shall forward to the administrative authority a Sewage Sludge and Biosolids Use or Disposal Permit application form having the following information:

- a. the laboratory analysis of the metals in Tables 1 and 3 of LAC 33:IX.7303.E;
- b. the laboratory analysis for percent dry solids, percent ammonia nitrogen, percent nitrate-nitrite, percent total Kjeldahl nitrogen, percent organic nitrogen, percent phosphorus, percent potassium, percent organic matter, and pH if the sewage sludge or biosolids underwent or was subjected to any type of alkaline stabilization and/or alkaline treatment;

c. the laboratory results for polychlorinated biphenyls (PCBs);

d. the Exceptional Quality biosolids pathogen requirement in LAC 33:IX.7309.C.1 that will be utilized;

e. the vector attraction reduction requirement in LAC 33:IX.7309.D.2.a-e that will be utilized; and

f. an example of the label or information sheet that will accompany biosolids that are sold or given away either in bulk or in a bag, containing the following information:

- i. the name and address of the preparer;
- ii. the concentration (by volume) of each metal in Table 3 of LAC 33:IX.7303.E;
- iii. total nitrogen;
- iv. percent ammonia (as N);
- v. percent phosphorus;
- vi. pH;
- vii. the concentration of PCBs in mg/kg of total solids (dry wt.); and
- viii. application instructions and a statement that application of the biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet.

2. The administrative authority may require that the biosolids meet more stringent pollutant limits, or limits for additional pollutants than those listed in Subparagraphs L.1.a-e of this Section, on a case-by-case basis after determining that the more stringent pollutant limits or limits for additional pollutants are needed to protect human health and the environment from any reasonably-anticipated adverse effect that may occur from the application of the biosolids to the land.

3. Samples required to be collected in accordance with Subparagraphs L.1.a-c of this Section shall be from at least four representative samplings of the biosolids taken at least 60 days apart within the 12 months prior to the date of the submittal of the Sewage Sludge and Biosolids Use or Disposal Permit application form.

4. All permits issued to persons who prepare sewage sludge as Exceptional Quality biosolids shall have a term of not more than five years.

5. For the term of the permit, the preparer of the biosolids shall conduct continued sampling at a frequency of monitoring of once per quarter. The samples shall be analyzed for the parameters specified in Subparagraphs L.1.a-c of this Section, and for the pathogen and vector attraction reduction requirements in Subparagraphs L.1.d and e, as required by LAC 33:IX.7309.

6. If results of the sampling indicate that the biosolids are no longer *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B, then the preparer must cease any land application of the biosolids as Exceptional Quality biosolids.

7. If biosolids that are no longer Exceptional Quality biosolids are used or disposed, the exemption for Exceptional Quality biosolids no longer applies, and the biosolids must meet all the requirements and restrictions of this Chapter that apply to biosolids that are no longer Exceptional Quality biosolids.

8. Biosolids shall not be applied to the land as Exceptional Quality biosolids until the sample analyses have shown that the biosolids meet the criteria for *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

9. The person who prepares the biosolids shall develop the following information and shall retain the information for five years:

- a. the results of the sample analysis required in Paragraph L.5 of this Section; and
- b. the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Exceptional Quality biosolids pathogen requirements in LAC 33:IX.7309.C.1 and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in LAC 33:IX.7309.D.2.a-e] was prepared under my direction and supervision in accordance with the system as described in the permit application, designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

10. The person who prepares Exceptional Quality biosolids shall forward the information required in Paragraph L.9 of this Section to the administrative authority on a quarterly basis. The schedule for quarterly submission is contained in the following table.

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

M. Any person subject to these regulations who prepares sewage sludge may petition the administrative authority to allow the land application of sewage sludge that is mixed with grease that was pumped or removed from a food service facility.

1. The administrative authority may grant temporary approval, for a period not to exceed one year, for the land application of sewage sludge that is mixed with grease that was pumped or removed from a food service facility, along with the appropriate monitoring, sampling and analysis, recordkeeping, and reporting requirements, when petitions for such are deemed appropriate after consideration of the factors enumerated in Paragraph M.2 of this Section as well as any other pertinent factors.

2. Each petition for the allowance of land application of sewage sludge that is mixed with grease that was pumped or removed from a food service facility shall:

- a. be submitted in writing to the administrative authority;
- b. be accompanied by evidence of public notice in the state journal and in the local journal; and
- c. contain the following information:
 - i. documentation to prove that the preparation or treatment process will be the composting process to further reduce pathogens described in LAC 33:IX.7399.Appendix L;
 - ii. documentation to prove that the facility owner/operator has successfully completed a department-approved composting facility operator training course; and
 - iii. documentation to satisfy the requirements in Subsection L of this Section and LAC 33:IX.7305 and 7307.

3. If the owner/operator wishes to continue operation of the compost facility, he or she shall submit to the administrative authority a completed Sewage Sludge and Biosolids Use or Disposal Permit application form at least

180 days prior to the expiration date of the approval. The decision to grant or deny a permit for continuation of the compost operation shall be based on the information provided in the permit application, the monitoring and sampling and analysis results submitted during the one-year approval period, and any comments or other information received during the standard permit public notice period.

N. Procedure for the Addition or Removal of Land Application Sites

1. If a person who possesses a Sewage Sludge and Biosolids Use or Disposal Permit wishes to add a land application site or sites to the permit, the person shall submit a request package to the administrative authority containing the following information:

- a. evidence of notification of the landowners bordering the proposed land application site or sites. The notification shall be in the form of a public notice placed in the local newspaper being circulated in the area of the proposed site or sites, certified letters of notification that were either hand delivered or mailed to the landowners bordering the proposed site or sites, or signed agreements of the landowners bordering the proposed site or sites to application of biosolids to the site or sites;
- b. signed agreement(s) to the application of biosolids from the landowner(s) of the proposed site or sites; and
- c. a completed Sewage Sludge and Biosolids Use or Disposal Permit application form.

2. If a person who possesses a Sewage Sludge and Biosolids Use or Disposal Permit wishes to remove a land application site or sites from the permit, the person shall submit a request package to the administrative authority at least 90 days prior to the removal of the site or sites containing the following information:

- a. aerial photographs showing the location of the land application site or sites that are being proposed to be removed;
- b. certification that all biosolids that were stored at the site or sites have either been land applied in accordance with the permit requirements or totally removed and used at another site in accordance with the permit requirements or removed and disposed at a permitted landfill; and
- c. signed agreements from the landowner(s) of the site or sites for the site or sites to be removed from the land application of biosolids.

3. After receipt and review of the request package required in Paragraph N.1 of this Section for the addition of a land application site or sites or the request package required in Paragraph N.2 of this Section for the removal of a land application site or sites, a decision shall be rendered by the administrative authority regarding the request.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§7305. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge [Formerly §6905]

A. Exemption. A *publicly owned treatment works (POTW)*, as defined in LAC 33:IX.7301.B, shall be exempted from the siting requirements in Subsection B of this Section and the facility closure requirements in

Paragraph C.3 of this Section if the POTW prepares only sewage sludge generated at the POTW or sewage sludge generated at a facility that is owned or operated by the POTW and the POTW's sewage sludge treatment facility is located within the POTW's boundary or perimeter.

B. Siting

1. Location Characteristics

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

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

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

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

e. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a 3-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a 3-foot depth below this zone.

f. Untreated sewage sludge, other materials, feedstock, or supplements to be utilized at a facility shall not be located less than 25 feet from a subsurface drainage pipe or drainage ditch that discharges directly to waters of the state.

g. New or first-time-permitted facilities that are not located within the boundaries of a legally zoned and established industrial park:

i. shall not be located less than 1,000 feet from an established *institution*, as defined in LAC 33:IX.7301.B, unless special permission is granted by the owner of the institution. The permission must be in the form of an affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the facility be located less than 200 feet from such an institution; and

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

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

i. 1,200 feet from the *air operations area*, as defined in LAC 33:IX.7301.B; or

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

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

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

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

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

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

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

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

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

i. All facilities shall have a perimeter barrier around the facility that prevents unauthorized ingress or egress, except by willful entry.

ii. During operating hours, each facility entry point shall be continuously monitored, manned, or locked.

iii. During non-operating hours, each facility entry point shall be locked.

iv. All facilities that receive sewage sludge, other materials, feedstock, or supplements from off-site sources shall post readable signs that list the types of sewage sludge, other materials, feedstock, or supplements that can be received at the facility.

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care with access gates that are wide enough to allow easy access for emergency vehicles, or such services shall be provided internally.

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

i. Any facility used to prepare sewage sludge shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge, other materials, feedstock, or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of other materials, feedstock, or supplements. The facility shall also be equipped with a

device or method to control entry of sewage sludge, other materials, feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

ii. Any facility used to prepare sewage sludge shall be equipped with a central control and recordkeeping system for tabulating the information required in Clause B.2.c.i of this Section.

3. Facility Surface Hydrology

a. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the facility to adjoining areas during a 24-hour/25-year storm event. When rainfall records are not available, the design standard shall be 12 inches of rainfall below 31 degrees north latitude and 9 inches of rainfall above 31 degrees north latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

b. Storm water run-on shall be prevented from entering the receiving, processing, curing, and storage areas by the use of berms or other physical barriers.

c. The topography of the facility shall provide for drainage to prevent standing water and shall allow for drainage away from the facility.

d. All storm water and wastewater from a facility must conform to applicable requirements of LAC 33:IX.Chapters 23-67.

4. Facility Geology

a. Except as provided in Subparagraph B.4.c of this Section, facilities shall have natural stable soils of low permeability for the area occupied by the facility, including vehicle parking and turnaround areas, that should provide a barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing strata that would provide conduits to such an aquifer.

b. The natural soil surface must be capable of supporting heavy equipment operation during and after prolonged periods of rain.

c. A design for surfacing natural soils that do not meet the requirements in Subparagraphs B.4.a and b of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subparagraphs B.4.a and b of this Section shall be provided.

5. Facility Plans and Specifications. Facility plans and specifications represented and described in the permit applications or permit modifications for all facilities must be prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

C. Operations

1. Operational Requirements for All Preparers of Sewage Sludge

a. Facility Operations and Maintenance Manual

i. A facility operations and maintenance manual shall be developed and forwarded with the permit application to the administrative authority.

ii. The facility operations and maintenance manual shall describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

- (a). site and project description;
- (b). regulatory interfaces;
- (c). process management plan;
- (d). pathogen treatment plan;
- (e). odor management plan;
- (f). worker health and safety management plan;
- (g). housekeeping and nuisance management

plan;

(h). emergency preparedness plan;

(i). security, community relations, and public access plan;

(j). regulated chemicals (list and location of regulated chemicals kept on-site);

(k). recordkeeping procedures;

(l). feedstock, supplements, and process management;

(m). product distribution records;

(n). operator certification; and

(o). administration of the operations and maintenance manual.

iii. The facility operations and maintenance manual shall be kept on-site and readily available to employees and, if requested, to the administrative authority or his/her duly authorized representative.

b. Facility Operational Standards

i. The facility must include a receiving area, a mixing area, a curing area, a compost storage area for composting operations, drying and screening areas, and a truck wash area, which shall be located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge, and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided, or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate produced in the composting process:

(a). shall be collected and disposed off-site at a permitted facility; or

(b). shall be collected, treated, and discharged on-site in accordance with LAC 33:IX.Chapters 23-67; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

- (a). The production of odor shall be minimized.
- (b). Processed air and other sources of odor shall

be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

2. Additional Operational Requirements for Composters

a. The facility operations and maintenance manual shall include the methods utilized for managing the biological conditions during the composting procedure (i.e., carbon/nitrogen ratio, moisture, O₂ levels, free air space).

b. The composting procedure shall begin within 24 hours of receipt of the material to be prepared as a compost.

c. The facility shall have a storage capacity designed for the finished compost for a quantity not to exceed 18 months' production.

d. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved facility.

e. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

f. The final composted product shall be stable and mature.

g. In addition to the label requirements in LAC 33:IX.7303.L.1.f.i-viii, the label that must accompany all compost sold or given away either in bulk or in a bag or other container shall contain the following information:

- i. soluble salt content;
- ii. water holding capacity;
- iii. bulk density (lbs/yd³);
- iv. particle size;
- v. moisture content; and
- vi. organic matter content.

h. Adequate covers shall be provided for windrows during the curing stage to protect the compost from rainwater.

i. Covered areas shall be provided where feedstock is prepared.

3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual units within a facility and shall provide the following information:

- i. the date of planned closure;
- ii. changes, if any, requested in the approved closure plan; and
- iii. the closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining untreated and unprepared sewage sludge, other materials, feedstock, and supplements shall be dewatered, removed, and disposed of in a permitted facility within 10 days of ceasing operations.

iii. All biosolids shall be used or disposed of in accordance with the provisions set forth in these regulations within 10 days of ceasing operations.

c. Additional Closure Requirements. Additional closure requirements for commercial preparers of sewage sludge who utilize composting as the process to prepare the sewage sludge and for all other commercial preparers of sewage sludge who prepare an amount of sewage sludge equal to or greater than 15,000 metric tons per year are as follows.

i. The permit holder shall verify that the soils within the facility boundary have not been contaminated in the operation of the facility.

ii. If contamination exists, a remediation/removal program developed to meet the requirements of Subparagraph C.3.d of this Section must be provided to the administrative authority.

d. Remediation/Removal Program

i. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other materials, feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other materials, feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). submission of the analyses to the Office of Environmental Services confirming that the requirements of Subparagraph C.3.b of this Section have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services before backfilling

takes place. The administrative authority will determine whether the facility has been closed properly.

ii. If the permit holder demonstrates that removal of most of the biosolids, untreated sewage sludge, other materials, feedstock, and supplements in order to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet applicable standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause C.3.c.ii of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause C.3.c.ii.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

iii. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§7307. Financial Assurance Requirements for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids [Formerly §6907]

A. Financial Responsibility During Operation. Commercial preparers of sewage sludge and commercial land appliers of biosolids have the following financial responsibilities while their facilities are in operation.

1. Commercial preparers of sewage sludge and commercial land appliers of biosolids have the same financial assurance requirements as privately-owned sewage treatment facilities (LAC 33:IX.Chapter 67) if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority. Such an alternative financial assurance mechanism shall not result in a value of financial assurance that is less than the amount provided as a written cost estimate for closure of the facility in the permit application.

2. All other commercial preparers of sewage sludge and commercial land appliers of biosolids shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$1 million annual aggregate, per site, exclusive of legal defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This

financial responsibility may be established by any one or a combination of the following.

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

i. a statement of coverage relative to environmental risks;

ii. a statement of all exclusions to the policy; and

iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy provided, however, that any provisions of the policy inconsistent with Subclauses A.2.a.iii.(a)-(f) of this Section are amended to conform with said Subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subparagraph A.2.d, e, or f of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Environmental Services;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Environmental Services; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

b. Wording of Liability Endorsement. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.7395.Appendix A, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

c. Wording of Certificate of Insurance. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix B, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

d. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the administrative authority.

i. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

ii. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Subsection must

also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be as specified in Subparagraph B.3.i of this Section.

iii. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

- (a). the agency interest number;
- (b). the site name;
- (c). the facility name;
- (d). the facility permit number; and
- (e). the amount of funds assured for liability coverage of the facility by the letter of credit.

iv. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the Office of Environmental Services receive the notice, as evidenced by the return receipts.

v. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395.Appendix C, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

e. Financial Test

i. To meet this test, the applicant, permit holder, or parent corporation of the applicant (corporate guarantor) or permit holder must submit to the Office of Environmental Services the documents required by Paragraph B.8 of this Section demonstrating that the requirements of Paragraph B.8 of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the permit holder, applicant, or parent corporation (corporate guarantor). If the applicant, permit holder, or parent corporation is using the financial test to demonstrate liability coverage and closure and post-closure care, only one letter from the chief financial officer is required.

ii. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subparagraph A.2.f of this Section.

iii. The wording of the financial test shall be as specified in Subparagraph B.8.d of this Section.

f. Corporate Guarantee

i. A permit holder or applicant may meet the requirements of Paragraph A.2 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The terms of the corporate guarantee

must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

(a). the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

(b). the guarantor is the parent corporation of the permit holder or applicant of the commercial preparer of sewage sludge or land applier of biosolids to be covered by the guarantee, and the guarantee extends to certain facilities;

(c). if the permit holder or applicant fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

(d). the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the permit holder or applicant has done so;

(e). the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

(f). the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure or post-closure care, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant unless the permit holder or applicant has done so;

(g). the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

(h). the guarantor agrees to remain bound under the guarantee for as long as the permit holder or applicant must comply with the applicable financial assurance requirements of Subsection B of this Section for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the permit holder or applicant. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder, as evidenced by the return receipts;

(i). the guarantor agrees that if the permit holder or applicant fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant;

(j). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder or applicant. Guarantor also expressly waives notice of amendments or modifications of the facility permit(s); and

(k). the wording of the corporate guarantee shall be as specified in Subparagraph B.8.i of this Section.

ii. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Environmental Services that a corporate guarantee is a legally valid and enforceable obligation in that state.

g. The use of a particular financial responsibility mechanism is subject to the approval of the administrative authority.

h. Permit holders of existing facilities must submit, on or before February 20, 1995, financial responsibility documentation that complies with the requirements of this Subsection. Applicants for permits for new facilities must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other materials, feedstock, or supplements are first received for processing.

B. Financial Responsibility for Closure and Post-Closure Care for a Commercial Preparer of Sewage Sludge

1. Permit holders or applicants have the following financial responsibilities for closure and post-closure care.

a. Permit holders or applicants shall establish and maintain financial assurance for closure and post-closure care.

b. The applicant or permit holder shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.

i. The applicant or permit holder must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these rules. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

ii. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these rules. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care

required, and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

iii. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared, on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Clauses B.1.b.i-ii of this Section. The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure plan. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

iv. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the pay-in period. The initial pay-in period is based on the estimated life of the facility.

2. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

a. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for either closure or post-closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. A permit holder or applicant may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within the state of Louisiana and are specifically identified in the mechanism.

c. The amount covered by the financial assurance mechanism(s) must equal the total of the current closure and post-closure estimates for each facility covered.

d. When all closure and post-closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanism(s).

3. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally-signed duplicate

of the trust agreement to the Office of Environmental Services.

a. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

b. Trusts must be accomplished in accordance with and subject to the laws of the state of Louisiana. The beneficiary of the trust shall be the administrative authority.

c. Trust fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the permit holder or applicant upon approval of the administrative authority.

d. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the permit holder or applicant.

e. The permit holder or applicant may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The permit holder or applicant must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Clause B.1.b.iv of this Section.

f. If the permit holder or applicant establishes a trust fund after having used one or more of the alternate mechanisms specified in this Section, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Paragraph.

g. After the pay-in period is completed, whenever the current cost estimate changes, the permit holder must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the permit holder or applicant, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure/post-closure cost estimate or it must estimate or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and/or post-closure may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

i. The wording of the trust agreement shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal

certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

4. Surety Bonds. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the operator will:

i. fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

ii. fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure or post-closure is issued; or

iii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after receipt by both the permit holder and the administrative authority of a notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure estimate and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the permit holder and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

h. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:IX.7395.Appendix E, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

5. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

a. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

b. The permit holder or applicant who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The bond must guarantee that the permit holder or applicant will:

i. perform final closure and post-closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

ii. provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided within 90 days after the date both the permit holder and the administrative authority receive notice of cancellation of the bond from the surety.

d. Under the terms of the bond, the surety will become liable on the bond obligation when the permit holder fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the permit holder has failed to perform final closure and post-closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure and post-closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

e. The penal sum of the bond must be at least equal to the current closure and post-closure cost estimates.

f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the permit holder, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

g. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permit holder and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed beginning on the date that both the permit holder and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

h. The wording of the performance bond shall be identical to the wording in LAC 33:IX.7395.Appendix F,

except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

6. Letter of Credit. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Environmental Services.

a. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A permit holder or applicant who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be as specified in Subparagraph B.3.i of this Section.

c. The letter of credit must be accompanied by a letter from the permit holder or applicant referring to the letter of credit by number, issuing institution, and date, and providing the following information:

i. the agency interest number;

ii. the site name;

iii. the facility name;

iv. the facility permit number; and

v. the amount of funds assured for closure and/or post closure of the facility by the letter of credit.

d. The letter of credit must be irrevocable and issued for a period of at least one year, unless, at least 120 days before the current expiration date, the issuing institution notifies both the permit holder and Office of Environmental Services by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the permit holder and the administrative authority have received the notice, as evidenced by the return receipts.

e. The letter of credit must be issued in an amount at least equal to the current closure and post-closure cost estimates.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the permit holder, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure and post-closure cost estimates upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the permit holder has failed to perform final closure or post-closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

h. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395.Appendix G,

except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

7. Insurance. A permit holder or applicant may satisfy the requirements of this Subsection by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Environmental Services.

a. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in the state of Louisiana.

b. The insurance policy must be issued for a face amount at least equal to the current closure and post-closure cost estimates.

c. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. The insurance policy must guarantee that funds will be available to close the facility and provide post-closure care once final closure occurs. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

e. After beginning final closure, a permit holder or any other person authorized by the permit holder to perform closure and post-closure may request reimbursement for closure or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

f. The permit holder must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the permit holder.

g. Each policy must contain a provision allowing assignment of the policy to a successor permit holder. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the permit holder and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the permit holder receive notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

i. the administrative authority deems the facility abandoned;

ii. the permit is terminated or revoked or a new permit is denied;

iii. closure and/or post-closure is ordered;

iv. the permit holder is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

v. the premium due is paid.

i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the permit holder, within 60 days after the increase, must either increase the face amount to at least equal to the current closure and post-closure cost estimates and submit evidence of such increase to the Office of Environmental Services or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure and post-closure cost estimates following written approval by the administrative authority.

j. The wording of the certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix H, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

8. Financial Test. A permit holder, applicant, or parent corporation of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Paragraph. The assets of the parent corporation of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Paragraph A.2.f and/or B.8.i of this Section.

a. To pass this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must meet either of the following criteria:

i. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). tangible net worth of at least six times the sum of the current closure and post-closure estimates to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either at least 90 percent of his total assets, or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the permit holder, applicant, or parent corporation of the permit holder or applicant must have:

(a). a current rating for his most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(b). tangible net worth of at least \$10 million; and

(c). assets in the United States amounting to either 90 percent of his total assets or at least six times the sum of the current closure and post-closure estimates, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that he or she meets this test, the permit holder, applicant, or parent corporation of the permit holder or applicant must submit the following three items to the Office of Environmental Services:

i. a letter signed by the chief financial officer of the permit holder, applicant, or parent corporation demonstrating and certifying the criteria in Subparagraph B.8.a of this Section and including the information required by Subparagraph B.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

ii. a copy of the independent certified public accountant's (CPA's) report on the financial statements of the permit holder, applicant, or parent corporation of the permit holder or applicant for the latest completed fiscal year; and

iii. a special report from the independent CPA to the permit holder, applicant, or parent corporation of the permit holder or applicant stating that:

(a). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(b). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

c. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor), permit holder, or applicant. The permit holder, applicant, or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

d. The permit holder, applicant, or parent corporation (if a corporate guarantor) of the permit holder or applicant shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:IX.7395.Appendix I, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall certify the following information:

i. a list of commercial facilities, whether in the state of Louisiana or not, owned or operated by the permit holder or applicant of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

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

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

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

e. For the purposes of this Subsection the phrase *tangible net worth* shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

f. The phrase *current closure and post-closure cost estimates*, as used in Subparagraph B.8.a of this Section, includes the cost estimates required to be shown in Subclause B.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subparagraph B.8.b of this Section, the permit holder, applicant, or parent corporation of the permit holder or applicant must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Subparagraph B.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or parent corporation of the permit holder or applicant may no longer meet the requirements of Paragraph B.8 of this Section, require reports of financial condition at any time in addition to those specified in Subparagraph B.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or parent corporation of the permit holder or applicant no longer meets the requirements of Subparagraph B.8.b of this Section, the permit holder or applicant, or parent corporation of the permit holder or applicant must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. A permit holder or applicant may meet the requirements of Paragraph B.8 of this Section for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must be the parent corporation of the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Subparagraphs B.8.a-h of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Subparagraphs B.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:IX.7395.Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The terms of the corporate guarantee must

be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

i. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Paragraph B.8 of this Section;

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

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

iv. for value received from the permit holder or applicant, the guarantor guarantees to the Office of Environmental Services that the permit holder or applicant will perform closure, post-closure care, or closure and post-closure care of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the permit holder or applicant fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Paragraph B.3 of this Section, in the name of the permit holder or applicant, in the amount of the current closure or post-closure cost estimates or as specified in Subparagraph B.1.b of this Section;

v. the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Environmental Services and to the permit holder or applicant that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the permit holder or applicant, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the permit holder or applicant has done so;

vi. the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

vii. the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in this Subsection in the name of the permit holder or applicant, unless the permit holder or applicant has done so;

viii. the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure or post closure, or any other

modification or alteration of an obligation of the permit holder or applicant in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the permit holder must comply with the applicable financial assurance requirements of this Subsection for the above-listed facilities, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the permit holder or applicant. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the permit holder or applicant, as evidenced by the return receipts;

x. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the owner or operator; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the permit holder. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

9. Local Government Financial Test. An owner or operator that satisfies the requirements of Subparagraphs B.9.a-c of this Section may demonstrate financial assurance up to the amount specified in Subparagraph B.9.d of this Section.

a. Financial Component

i. The owner or operator must satisfy the following conditions, as applicable:

(a). if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(b). the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

ii. The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have his financial statements audited by an independent certified public accountant (or appropriate state agency).

iii. A local government is not eligible to assure its obligations under Paragraph B.9 of this Section if it:

(a). is currently in default on any outstanding general obligation bonds;

(b). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(c). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(d). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Clause B.9.a.ii of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

iv. The following terms used in this Subsection are defined as follows.

(a). *Deficit*—total annual revenues minus total annual expenditures.

(b). *Total Revenues*—revenues from all taxes and fees, but not including the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(c). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(d). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(e). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure and post-closure costs, conformance with *Governmental Accounting Standards Board Statement 18* assures compliance with this public notice component.

c. Recordkeeping and Reporting Requirements

i. The local government owner or operator must place the following items in the facility's operating record:

(a). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subparagraph B.9.d of this Section. It must provide evidence that the local government meets the conditions of Clauses B.9.a.i-iii of this Section, and certify that the local government meets the conditions of Clauses B.9.a.i-iii and Subparagraphs B.9.b and d of this Section;

(b). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years, and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(c). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed-upon procedures engagement relative to the financial ratios required by Subclause B.9.a.i.(b) of this Section, if applicable, and the requirements of Clause B.9.a.ii and Subclauses B.9.a.iii.(c)-(d) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subparagraph B.9.b of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Clause B.9.c.i of this Section must be placed in the facility operating record, in the case of closure and post-closure care, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

iii. After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

iv. The local government owner or operator is no longer required to meet the requirements of Subparagraph B.9.c of this Section when:

(a). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsection A or B of this Section.

v. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Environmental Services that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

vi. The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

d. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Paragraph B.9 of this Section is determined as follows:

i. if the local government owner or operator does not assure other environmental obligations through a

financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

ii. if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under Paragraph B.9 of this Section, and the total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Clauses B.9.d.i-ii of this Section.

10. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure and post-closure, as required by Subsections A and B of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Paragraph B.9 of this Section, and must comply with the terms of a written guarantee.

a. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure and post-closure care. The guarantee must provide that:

i. if the owner or operator fails to perform closure and post-closure care, of a facility covered by the guarantee, the guarantor will:

(a). perform, or pay a third party to perform, closure and post-closure care as required; or

(b). establish a fully funded trust fund as specified in Paragraph B.3 of this Section in the name of the owner or operator;

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

iii. if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services.

b. Recordkeeping and Reporting

i. The owner or operator must place a certified copy of the guarantee, along with the items required under Subparagraph B.9.c of this Section, into the facility's operating record before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure or post-closure care.

ii. The owner or operator is no longer required to maintain the items specified in Clause B.10.b.i of this Section when:

(a). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(b). the owner or operator is released from the requirements of this Section in accordance with Subsections A and B of this Section.

iii. If a local government guarantor no longer meets the requirements of Paragraph B.9 of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

11. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsections A and B of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Paragraphs B.3-8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

a. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer to the Office of Environmental Services so stating;

b. the state finds the facility in compliance with applicable and appropriate permit conditions;

c. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§7309. Pathogens and Vector Attraction Reduction
[Formerly §6909]

A. Scope. This Section contains the following:

1. the requirements for a sewage sludge to be classified either as Exceptional Quality or Class B biosolids with respect to pathogens;

2. the site restrictions for land on which Class B biosolids are applied; and

3. the alternative vector attraction reduction requirements for biosolids that are applied to the land.

B. Special Definitions. In addition to the terms referenced and defined at LAC 33:IX.7301.B, the following definitions apply to this Section.

Aerobic Digestion—the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

Anaerobic Digestion—the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

Density of Microorganisms—the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

Land with a High Potential for Public Exposure—land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

Land with a Low Potential for Public Exposure—land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

Pathogenic Organisms—disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

pH—the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

Specific Oxygen Uptake Rate (SOUR)—the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

Total Solids—the materials in sewage sludge that remain as residue when the sewage sludge is dried to a constant weight at 103° to 105°C.

Unstabilized Solids—organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Vector Attraction—the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Volatile Solids—the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

C. Pathogens

1. Exceptional Quality Biosolids

a. The requirement in Subparagraph C.1.b of this Section, and the requirements in Subparagraph C.1.c, d, e, f, g, or h of this Section, must be met for biosolids classified as Exceptional Quality biosolids with respect to pathogens.

b. The Exceptional Quality biosolids pathogen requirements in Subparagraphs C.1.c-h of this Section must

be met either prior to meeting or at the same time that the vector attraction reduction requirements in Subsection D of this Section, except the vector attraction reduction requirements in Subparagraphs D.2.d-e.ii of this Section, are met.

c. Exceptional Quality Biosolids—Alternative 1

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time, as follows.

(a). When the percent solids of the sewage sludge is 7 percent or higher, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 20 minutes or longer, and the temperature and time period shall be determined using Equation (2), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131,700,000}{10^{0.1400t}} \quad \text{Equation (2)}$$

where:

D = time in days

t = temperature in degrees Celsius

(b). When the percent solids of the sewage sludge is 7 percent or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 15 seconds or longer, and the temperature and time period shall be determined using Equation (2).

(c). When the percent solids of the sewage sludge is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using Equation (2).

(d). When the percent solids of the sewage sludge is less than 7 percent, the temperature of the sewage sludge is 50°C or higher, and the time period is 30 minutes or longer, the temperature and time period shall be determined using Equation (3).

$$D = \frac{50,070,000}{10^{0.1400t}} \quad \text{Equation (3)}$$

where:

D = time in days

t = temperature in degrees Celsius

d. Exceptional Quality Biosolids—Alternative 2

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed,

at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. pH and Temperature Standards

(a). The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(b). The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(c). At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50 percent.

e. Exceptional Quality Biosolids—Alternative 3

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(a). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality biosolids with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(b). When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality biosolids with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(c). After the enteric virus reduction in Subclause C.1.e.ii.(b) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be Exceptional Quality biosolids with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.ii.(b) of this Section.

iii. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(a). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than 1 per 4 grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality biosolids with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(b). When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than 1 per 4 grams of total solids (dry weight basis), the sewage sludge is Exceptional Quality biosolids with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than 1 per 4 grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(c). After the viable helminth ova reduction in Subclause C.1.e.iii.(b) of this Section is demonstrated for the pathogen treatment process, the sewage sludge continues to be Exceptional Quality biosolids with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in Subclause C.1.e.iii.(b) of this Section.

f. Exceptional Quality Biosolids—Alternative 4

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. The density of enteric viruses in the biosolids shall be less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in LAC 33:IX.7303.A.2.a and 3.a, unless otherwise specified by the permitting authority.

iii. The density of viable helminth ova in the biosolids shall be less than 1 per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

g. Exceptional Quality Biosolids—Alternative 5

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry

weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in LAC 33:IX.7399.Appendix B.

h. Exceptional Quality Biosolids—Alternative 6

i. Either the density of fecal coliform in the biosolids shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids shall be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids*, as defined in LAC 33:IX.7301.B.

ii. Sewage sludge that is used or disposed shall be treated in a process that is equivalent to a Process to Further Reduce Pathogens that has been approved by the Environmental Protection Agency's (EPA's) Pathogen Equivalency Committee.

iii. Requests for approval of alternative innovative processes, as a process that is equivalent to a Process to Further Reduce Pathogens, that have not yet been approved by the EPA's Pathogen Equivalency Committee shall initially be submitted to the administrative authority. The administrative authority shall then work with the EPA's Pathogen Equivalency Committee on the proper procedures for EPA's review of the request.

2. Class B Biosolids

a. The requirements in Subparagraph C.2.b, c, or d of this Section must be met for biosolids classified as Class B biosolids with respect to pathogens. The site restrictions in Subparagraph C.2.e of this Section must be met when biosolids that meet the Class B biosolids pathogen requirements in Subparagraph C.2.b, c, or d of this Section are applied to the land.

b. Class B Biosolids—Alternative 1

i. Seven representative samples of the biosolids that are used or disposed shall be collected.

ii. The geometric mean of the density of fecal coliform in the samples required by Clause C.2.b.i of this Section shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

c. Class B Biosolids—Alternative 2. Biosolids that are used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in LAC 33:IX.7399.Appendix L.

d. Class B Biosolids—Alternative 3. Biosolids that are used or disposed shall be treated in a process that is equivalent to a Process to Significantly Reduce Pathogens that has been approved by the EPA's Pathogen Equivalency Committee. Requests for approval of alternative innovative

processes, as a process that is equivalent to a Process to Further Reduce Pathogens, that have not yet been approved by the EPA's Pathogen Equivalency Committee shall initially be submitted to the administrative authority. The administrative authority shall then work with the EPA's Pathogen Equivalency Committee on the proper procedures for EPA's review of the request.

e. Site Restrictions

i. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of biosolids.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of biosolids when the biosolids remain on the land surface for four months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of biosolids when the biosolids remain on the land surface for less than four months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of biosolids.

v. Animals shall not be grazed on the land for 30 days after application of biosolids.

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

vii. Public access to land with a high potential for public exposure shall be restricted for one year after application of biosolids, by means approved by the administrative authority.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of biosolids, by means approved by the administrative authority.

D. Vector Attraction Reduction

1. Land Application Requirements

a. One of the vector attraction reduction requirements in Subparagraphs D.2.a-j of this Section shall be met when bulk biosolids are applied to agricultural land, forest, a public contact site, or a reclamation site.

b. One of the vector attraction reduction requirements in Subparagraphs D.2.a-h of this Section shall be met when bulk biosolids are applied to a lawn or a home garden.

c. One of the vector attraction reduction requirements in Subparagraphs D.2.a-h of this Section shall be met when biosolids are sold or given away in a bag or other container for application to the land.

2. Procedures to Attain Vector Attraction Reduction for Land Application

a. Volatile Solids Reduction

i. The mass of volatile solids in the biosolids shall be reduced by a minimum of 38 percent (see calculation procedures in *Environmental Regulations and Technology—Control of Pathogens and Vector Attraction in Sewage Sludge*, EPA-625/R-92/013, 1992, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268).

ii. When the 38 percent volatile solids reduction requirement in Clause D.2.a.i of this Section cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37°C. When, at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17 percent, vector attraction reduction is achieved.

iii. When the 38 percent volatile solids reduction requirement in Clause D.2.a.i of this Section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2 percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.

b. Specific Oxygen Uptake Rate (SOUR). The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

c. Aerobic Treatment. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

d. Alkaline Treatment. The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

e. Percent Solids. In order to attain vector attraction reduction through percent solids, either of the following must be met:

i. the percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75 percent based on the moisture content and total solids prior to mixing with other materials; or

ii. the percent solids of sewage sludge that does contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90 percent based on the moisture content and total solids prior to mixing with other materials.

f. Injection of Biosolids

i. Biosolids shall be injected below the surface of the land.

ii. No significant amount of biosolids shall be present on the land surface within one hour after the biosolids are injected.

iii. When the biosolids that are injected below the surface of the land are Exceptional Quality biosolids with respect to pathogens, the biosolids shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

g. Incorporation of Biosolids

i. Biosolids applied to the land surface shall be incorporated into the soil within six hours after application

to the land, unless otherwise specified by the permitting authority.

ii. When biosolids that are incorporated into the soil are Exceptional Quality biosolids with respect to pathogens, the biosolids shall be applied to the land within eight hours after being discharged from the pathogen treatment process.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§7311. Incineration [Formerly §6911]

A. Applicability

1. This Section applies to a person who fires only sewage sludge or sewage sludge and *auxiliary fuel*, as defined in Subsection B of this Section, in a sewage sludge incinerator; to a *sewage sludge incinerator*, as defined in Subsection B of this Section; and to sewage sludge or sewage sludge and auxiliary fuel fired in a sewage sludge incinerator.

2. This Section applies to the exit gas from a sewage sludge incinerator stack.

B. Special Definitions. All terms not defined below shall have the meaning given them in LAC 33:IX.7301.B and in LAC 33:III.111.

Air Pollution Control Device—one or more processes used to treat the exit gas from a sewage sludge incinerator stack.

Auxiliary Fuel—fuel used to augment the fuel value of sewage sludge. This includes, but is not limited to, natural gas, fuel oil, coal, gas generated during anaerobic digestion of sewage sludge, and municipal solid waste (not to exceed 30 percent of the dry weight of sewage sludge and auxiliary fuel together). Hazardous wastes are not auxiliary fuel.

Average Daily Concentration—the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

Control Efficiency—the mass of a pollutant in the sewage sludge fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the sewage sludge fed to the incinerator.

Dispersion Factor—the ratio of the increase in the ground level ambient air concentration for a pollutant at or beyond the property line of the site where the sewage sludge incinerator is located to the mass emission rate for the pollutant from the incinerator stack.

Fluidized Bed Incinerator—an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

Hourly Average—the arithmetic mean of all measurements, taken during an hour. At least two measurements must be taken during the hour.

Incineration—the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

Incinerator Operating Combustion Temperature—the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the

temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

Monthly Average—the arithmetic mean of the hourly averages for the hours a sewage sludge incinerator operates during the month.

Performance Test Combustion Temperature—the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test.

Risk Specific Concentration—the allowable increase in the average daily ground level ambient air concentration for a pollutant from the incineration of sewage sludge at or beyond the property line of the site where the sewage sludge incinerator is located.

Sewage Sludge Feed Rate—either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365-day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located.

Sewage Sludge Incinerator—an enclosed device in which only sewage sludge or sewage sludge and auxiliary fuel are fired.

Stack Height—the difference between the elevation of the top of a sewage sludge incinerator stack and the elevation of the ground at the base of the stack when the difference is equal to or less than 214 feet (65 meters). When the difference is greater than 214 feet (65 meters), stack height is the creditable stack height determined in accordance with LAC 33:III.921.

Standard—a standard of performance proposed or promulgated under this Chapter.

Stationary Source—any building, structure, facility, or installation that emits or may emit any air pollutant.

Total Hydrocarbons—the organic compounds in the exit gas from a sewage sludge incinerator stack measured using a flame ionization detection instrument referenced to propane.

Wet Electrostatic Precipitator—an air pollution control device that uses both electrical forces and water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

Wet Scrubber—an air pollution control device that uses water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

C. General Requirements

1. No person shall fire sewage sludge or sewage sludge and auxiliary fuel in a sewage sludge incinerator except in compliance with the requirements in this Section.

2. Performance Tests for New Stationary Sources

a. Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility and at such other times as may be required by the administrative authority, the owner or operator of such facility shall conduct performance test(s) and furnish the administrative authority a written report of the results of such performance test(s).

b. Performance tests shall be conducted and data reduced in accordance with the test methods and procedures

contained for each applicable requirement in Subsections D, E, and F of this Section, unless the administrative authority:

i. specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

ii. approves the use of an equivalent method;

iii. approves the use of an alternative method the results of which have been determined by the administrative authority to be adequate for indicating whether a specific source is in compliance;

iv. waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means, to the administrative authority's satisfaction, that the affected facility is in compliance with the standard; or

v. approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this Subparagraph shall be construed to abrogate the administrative authority's right to require additional testing if deemed necessary for proper determination of the standard of performance of the new stationary source.

c. Performance tests shall be conducted under such conditions as the administrative authority shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the administrative authority such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of start-up, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

d. The owner or operator of an affected facility shall provide the administrative authority at least 30 days prior notice of any performance test, except as otherwise specified in this Subsection, to afford the administrative authority the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the administrative authority as soon as possible of any delay in the original test date either by providing at least seven days prior notice of the rescheduled date of the performance test or by arranging a rescheduled date with the administrative authority by mutual agreement.

e. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

i. sampling ports adequate for test methods applicable to such facility, including:

(a) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(b) providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

ii. safe sampling platform(s);

iii. safe access to sampling platform(s); and

iv. utilities for sampling and testing equipment.

f. Unless otherwise specified in the applicable parts of this Paragraph, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner's or operator's control, compliance may, upon the administrative authority's approval, be determined using the arithmetic mean of the results of the two other runs.

3. In conducting the performance tests required in Paragraph C.2 of this Section, the owner or operator shall use as reference methods and procedures the test methods referenced in LAC 33:IX.7301.I or other methods and procedures as specified in this Section, except as provided for in Subparagraph C.2.b of this Section.

4. The owner or operator of any sewage sludge incinerator subject to the provisions of this Chapter shall conduct a performance test during which the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section are installed and operating and for which the sampling and analysis procedures required under Subparagraph G.1.d of this Section are performed as follows.

a. For incinerators that commenced construction or modification:

i. on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations, unless the monitoring and recording devices required under Paragraphs F.2, 4, and 6, Subparagraph F.8.a, and Paragraph F.9 of this Section were installed and operating and the sampling and analysis procedures required under Subparagraph G.1.d of this Section were performed during the most recent performance test and a record of the measurements taken during the performance test is available for review by the administrative authority; and

ii. on or after the effective date of these regulations, the date of the performance test shall be determined by the requirements in Paragraph C.2 of this Section.

b. The owner or operator shall provide the administrative authority at least 30 days prior notice of the performance test to afford the administrative authority the opportunity to have an observer present.

5. The owner or operator of any sewage sludge incinerator, other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber, shall submit a plan to the administrative authority for approval for monitoring and recording incinerator and control device operation parameters. The plan shall be submitted to the administrative authority as follows:

a. no later than 90 days after October 6, 1988, for sources that have provided notification of commencement of construction prior to October 6, 1988;

b. no later than 90 days after the notification of commencement of construction, for sources that provide notification of commencement of construction on or after October 6, 1988; and

c. at least 90 days prior to the date on which the new control device becomes operative for sources switching to a control device other than a wet scrubber.

D. Pollutant Limits

1. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

2. Firing of sewage sludge in a sewage sludge incinerator shall not violate the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116).

3. Pollutant Limit—Lead

a. The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using Equation (4).

$$C = \frac{0.1 \times NAAQS \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (4)}$$

where:

C = average daily concentration of lead in sewage sludge
 $NAAQS$ = national Ambient Air Quality Standard for lead in micrograms per cubic meter
 DF = dispersion factor in micrograms per cubic meter per gram per second
 CE = sewage sludge incinerator control efficiency for lead in hundredths
 SF = sewage sludge feed rate in metric tons per day (dry weight basis)

b. The dispersion factor (DF) in Equation (4) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge stack height is 214 feet (65 meters) or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (4).

ii. When the sewage sludge incinerator stack height exceeds 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921, and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for Equation (4).

c. The control efficiency (CE) for Equation (4) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

4. Pollutant Limit—Arsenic, Cadmium, Chromium, and Nickel

a. The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using Equation (5).

$$C = \frac{RSC \times 86,400}{DF \times (1 - CE) \times SF} \quad \text{Equation (5)}$$

where:

C = average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge
 CE = sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths

- DF* = dispersion factor in micrograms per cubic meter per gram per second
- RSC* = risk-specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter
- SF* = sewage sludge feed rate in metric tons per day (dry weight basis)

b. The risk-specific concentrations for arsenic, cadmium, and nickel used in Equation (5) shall be obtained from Table 1 of LAC 33:IX.7311.D.

Table 1 of LAC 33:IX.7311.D	
Risk-Specific Concentration for Arsenic, Cadmium, and Nickel	
Pollutant	Risk-Specific Concentration (micrograms per cubic meter)
Arsenic	0.023
Cadmium	0.057
Nickel	2.0

c. The risk-specific concentration for chromium used in Equation (5) shall be obtained from Table 2 of LAC 33:IX.7311.D or shall be calculated using Equation (6).

Table 2 of LAC 33:IX.7311.D	
Risk-Specific Concentration For Chromium	
Type of Incinerator	Risk-Specific Concentration (micrograms per cubic meter)
Fluidized bed with wet scrubber	0.65
Fluidized bed with wet scrubber and wet electrostatic precipitator	0.23
Other types with wet scrubber	0.064
Other types with wet scrubber and wet electrostatic precipitator	0.016

$$RSC = \frac{0.0085}{r} \quad \text{Equation (6)}$$

where:

RSC = risk-specific concentration for chromium in micrograms per cubic meter used in Equation (5)

r = decimal fraction of the hexavalent chromium concentration in the total chromium concentration measured in the exit gas from the sewage sludge incinerator stack in hundredths

d. The dispersion factor (*DF*) in Equation (5) shall be determined from an air dispersion model in accordance with Paragraph D.5 of this Section.

i. When the sewage sludge incinerator stack height is equal to or less than 214 feet (65 meters), the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (*DF*) for Equation (5).

ii. When the sewage sludge incinerator stack height is greater than 214 feet (65 meters), the creditable stack height shall be determined in accordance with LAC 33:III.921 and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (*DF*) for Equation (5).

e. The control efficiency (*CE*) for Equation (5) shall be determined from a performance test of the sewage sludge incinerator in accordance with Paragraph D.5 of this Section.

5. Air Dispersion Modeling and Performance Testing

a. The air dispersion model used to determine the dispersion factor in Subparagraphs D.3.b and 4.d of this Section shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this

Section shall be appropriate for the type of sewage sludge incinerator.

b. For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the administrative authority 30 days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

c. The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in Subparagraphs D.3.c and 4.e of this Section after September 3, 1999:

i. the performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator;

ii. the administrative authority shall be notified at least 30 days prior to any performance test so the administrative authority may have the opportunity to observe the test. The notice shall include a test protocol with incinerator operating conditions and a list of test methods to be used; and

iii. each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

d. The pollutant limits in Paragraphs D.3 and 4 of this Section shall be submitted to the administrative authority no later than 30 days after completion of the air dispersion modeling and performance test.

e. Significant changes in geographic or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

6. Standards for Particulate Matter

a. No owner or operator of any sewage sludge incinerator subject to the provisions of this Section shall discharge or cause the discharge into the atmosphere of:

i. particulate matter at a rate in excess of 0.65 g/kg dry sewage sludge input (1.30 lb/ton dry sewage sludge input); and

ii. any gases that exhibit 20 percent opacity or greater.

b. The owner or operator of a sewage sludge incinerator shall determine compliance with the particulate matter emission standards in Subparagraph D.6.a of this Section as follows:

i. the emission rate (*E*) of particulate matter for each run shall be computed using the following equation:

$$E = (C_s Q_{sd}) / KS$$

where:

E = emission rate of particulate matter, g/kg (lb/ton) of dry sewage sludge input

C_s = concentration of particulate matter, g/dscm (g/dscf)

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr)

S = charging rate of dry sewage sludge during the run, kg/hr (lb/hr)

K = conversion factor, 1.0 g/g [4.409 lb²/(g-ton)]

ii. Method 5 (40 CFR Part 60, Appendix A-3, incorporated by reference in LAC 33:III.3003) shall be used to determine the particulate matter concentration (*C_s*) and the

volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf);

iii. the dry sewage sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = K_m S_m R_{dm} / \Theta$$

$$S = K_v S_v R_{dv} / \Theta$$

where:

- S = charging rate of dry sewage sludge, kg/hr (lb/hr)
- S_m = total mass of sewage sludge charged, kg (lb)
- R_{dm} = average mass of dry sewage sludge per unit mass of sludge charged, mg/mg (lb/lb)
- Θ = duration of run, in minutes
- K_m = conversion factor, 60 min/hr
- S_v = total volume of sewage sludge charged, m³ (gal)
- R_{dv} = average mass of dry sewage sludge per unit volume of sewage charged, mg/Liter (lb/ft³)
- K_v = conversion factor, 60 X 10⁻³ (liter-kg-min)/(m³-mg-hr) [8.021 (ft³-min)/(gal-hr)]

iv. the flow measuring device of Paragraph F.2 of this Section shall be used to determine the total mass (S_m) or volume (S_v) of sewage sludge charged to the incinerator during each run. If the flow measuring device is on a time rate basis, readings shall be taken and recorded at 5-minute intervals during the run and the total charge of sewage sludge shall be computed using the following equations, as applicable:

$$S_m = \sum_{i=1}^n Q_{mi} / \Theta_i$$

$$S_v = \sum_{i=1}^n Q_{vi} / \Theta_i$$

where:

- Q_{mi} = average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", kg/min (gal/min)
- Q_{vi} = average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i", m³/min (gal/min)
- Θ_i = duration of interval "i", min

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and Part 2540, G. Total, Fixed, and Volatile Solids in Solid and Semisolid Samples (the test method indicated in LAC 33:IX.7301.I.2.g) shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

- (a). evaporating dishes shall be ignited to at least 103°C rather than the 550°C specified in Step 3(a)(1);
- (b). determination of volatile residue, Step 3(b) may be deleted;
- (c). the quantity of dry sewage sludge per unit sewage sludge charged shall be determined in terms of mg/Liter (lb/ft³) or mg/mg (lb/lb); and
- (d). the average dry sewage sludge content shall be the arithmetic average of all the samples taken during the run; and

vi. Method 9 (40 CFR 60, Appendix A-4, incorporated by reference in LAC 33:III.3003) shall be used to determine opacity.

E. Operational Standard—Total Hydrocarbons

1. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected for 0 percent moisture by multiplying the measured total

hydrocarbons concentration by the correction factor calculated using Equation (7).

$$\text{Correction factor (percent moisture)} = \frac{1}{(1 - X)} \quad \text{Equation (7)}$$

where:

X = decimal fraction of the percent moisture in the sewage sludge incinerator exit gas in hundredths

2. The total hydrocarbons concentration in the exit gas from a sewage sludge incinerator shall be corrected to 7 percent oxygen by multiplying the measured total hydrocarbons concentration by the correction factor calculated using Equation (8).

$$\text{Correction factor (oxygen)} = \frac{14}{(21 - Y)} \quad \text{Equation (8)}$$

where:

Y = percent oxygen concentration in the sewage sludge incinerator stack exit gas (dry volume/dry volume)

3. The monthly average concentration for total hydrocarbons in the exit gas from a sewage sludge incinerator stack, corrected for 0 percent moisture using the correction factor from Equation (7) and to 7 percent oxygen using the correction factor from Equation (8), shall not exceed 100 parts per million on a volumetric basis when measured using the instrument required by Paragraph F.5 of this Section.

F. Management Practices

1. The owner or operator of a sewage sludge incinerator shall provide access to the sewage sludge charged so that a well-mixed representative grab sample of the sewage sludge can be obtained.

2. A flow measuring device that can be used to determine either the mass or volume of sewage sludge charged to the incinerator shall be installed, calibrated, maintained, and properly operated.

a. The flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

b. The flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless the administrative authority specifies otherwise.

3. A weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid waste are incinerated together shall be installed, calibrated, maintained, and properly operated. The weighing device shall have an accuracy of ±5 percent over its operating range.

4. For incinerators equipped with a wet scrubbing device, a monitoring device that continuously measures and records the pressure drop of the gas flow through the wet scrubbing device shall be installed, calibrated, maintained, and properly operated.

a. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored.

b. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within ±250 pascals (±1 inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

5. An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator. The total hydrocarbons instrument shall employ a flame ionization detector, have a heated sampling line maintained at a temperature of 150°C or higher at all times, and be calibrated at least once every 24-hour operating period using propane.

6. An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

a. The oxygen monitoring device shall be located upstream of any rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air.

b. The oxygen monitoring device shall be certified by the manufacturer to have a relative accuracy of ±5 percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

7. An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

8. An instrument that continuously records combustion temperature at every hearth in multiple hearth furnaces, in the bed and outlet of fluidized bed incinerators, and in the drying, combustion, and cooling zones of electric incinerators shall be installed, calibrated, maintained, and properly operated.

a. For multiple hearth furnaces, a minimum of one thermocouple shall be installed in each hearth in the cooling and drying zones, and a minimum of two thermocouples shall be installed in each hearth in the combustion zone.

b. For electric incinerators, a minimum of one thermocouple shall be installed in the drying zone and one in the cooling zone, and a minimum of two thermocouples shall be installed in the combustion zone.

c. Each temperature measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

d. Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than 20 percent.

9. A device for measuring the fuel flow to the incinerator shall be installed, calibrated, maintained, and properly operated.

a. The fuel flow measuring device shall be certified by the manufacturer to have an accuracy of ±5 percent over its operating range.

b. The fuel flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator, unless the administrative authority specifies otherwise.

10. An air pollution control device shall:

a. be appropriate for the type of sewage sludge incinerator, and the operating parameters for the air pollution

control device shall be adequate to indicate proper performance of the air pollution control device; and

b. be operated so as not to cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by Subparagraphs D.3.c and 4.e of this Section, nor shall the operation of the air pollution control device violate any other requirements of this Section to which the air pollution control device is subjected.

11. The permittee shall collect and analyze sewage sludge fed to a sewage sludge incinerator for dry sludge content and volatile solids content using the method specified at Clause D.6.b.v of this Section, except that the determination of volatile solids, Step (3)(b) of the method, shall not be deleted.

12. Sewage sludge shall not be fired in a sewage sludge incinerator if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the Endangered Species Act, or its designated critical habitat.

13. The instruments required in Paragraphs F.2-9 of this Section shall be appropriate for the type of sewage sludge incinerator.

14. The administrative authority may exempt the owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from the daily sampling and analysis of sludge feed requirements in Paragraph F.11 and Subparagraph G.1.d of this Section and from the recordkeeping requirement in Subparagraph H.2.p of this Section for the volatile solids content, only, of the sewage sludge charged to the incinerator during all periods of this incinerator following the performance test if:

a. the particulate matter emission rate measured during the performance test required under Paragraph C.4 of this Section is less than or equal to 0.38 g/kg of dry sewage sludge input (0.75 lb/ton); and

b. the administrative authority determines that the requirements will not be necessary to evaluate the effects upon the environment and human health resulting from the emissions from the sewage sludge incinerator.

G. Frequency of Monitoring. Except as specified otherwise in this Section, the frequency of monitoring shall be as follows.

1. Sewage Sludge

a. The frequency of monitoring for beryllium shall be as required in Subpart C of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116), and for mercury as required in Subpart E of 40 CFR Part 61 (as incorporated by reference in LAC 33:III.5116).

b. The frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel in sewage sludge fed to a sewage sludge incinerator shall be the frequency in Table 1 of LAC 33:IX.7311.G.

Table 1 of LAC 33:IX.7311.G	
Frequency of Monitoring—Incineration	
Amount of Sewage Sludge ¹ (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (4 times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (6 times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

Table 1 of LAC 33:IX.7311.G	
Frequency of Monitoring—Incineration	
Amount of Sewage Sludge ¹ (metric tons per 365-day period)	Frequency
¹ Amount of sewage sludge fired in a sewage sludge incinerator (dry weight basis)	

c. After the sewage sludge has been monitored for two years at the frequency in Table 1 of LAC 33:IX.7311.G, the administrative authority may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

d. The frequency of monitoring for dry sewage sludge content and volatile solids content of the sewage sludge shall be once per day, as a grab sample of the sewage sludge fed to the incinerator.

2. Total Hydrocarbons, Oxygen Concentration, Moisture Content, and Combustion Temperatures. The total hydrocarbons concentration and oxygen concentration in the exit gas from a sewage sludge incinerator stack, the information used to measure moisture content in the exit gas, and the combustion temperatures for the sewage sludge incinerator shall be monitored continuously.

3. Air Pollution Control Device Operating Parameters. Unless specified otherwise in this Chapter, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be daily.

4. The frequency of monitoring shall be as specified in this Section for any performance testing or other sampling requirements not covered above. If the frequency of monitoring is not specified, then the frequency of monitoring shall be as specified by the administrative authority.

H. Recordkeeping

1. If the owner/operator of a sewage sludge incinerator is the person who prepares sewage sludge, the owner/operator of the sewage sludge incinerator shall keep a record of the annual production of sewage sludge (i.e., dry ton or dry metric tons) and of the sewage sludge management practice used and retain such record for a period of five years.

2. The owner/operator of a sewage sludge incinerator shall develop the following information and shall retain this information for five years:

a. the concentration of lead, arsenic, cadmium, chromium, and nickel in the sewage sludge fed to the sewage sludge incinerator;

b. the total hydrocarbons concentrations in the exit gas from the sewage sludge incinerator stack;

c. information that indicates the requirements in the national emission standard for beryllium in Subpart C of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

d. information that indicates the requirements in the national emission standard for mercury in Subpart E of 40 CFR Part 61 (as incorporated by reference at LAC 33:III.5116) are met;

e. the operating combustion temperatures for the sewage sludge incinerator;

f. values for the air pollution control device operating parameters;

g. the oxygen concentration and information used to measure moisture content in the exit gas from the sewage sludge incinerator stack;

h. the sewage sludge feed rate;

i. the stack height for the sewage sludge incinerator;

j. the dispersion factor for the site where the sewage sludge incinerator is located;

k. the control efficiency for lead, arsenic, cadmium, chromium, and nickel for each sewage sludge incinerator;

l. the risk-specific concentration for chromium calculated using Equation (6), if applicable;

m. a calibration and maintenance log for the instruments used to measure the total hydrocarbons concentration and oxygen concentration in the exit gas from the sewage sludge incinerator stack, the information needed to determine moisture content in the exit gas, and the combustion temperatures;

n. results of the particulate matter testing required in Subparagraph D.6.b of this Section;

o. for incinerators equipped with a wet scrubbing device, a record of the measured pressure drop of the gas flow through the wet scrubbing device, as required by Paragraph F.4 of this Section;

p. a record of the rate of sewage sludge fed to the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sewage sludge charged to the incinerator; and

q. results of all applicable performance tests required in this Section.

I. Reporting

1. If the owner/operator of a sewage sludge incinerator is the person who prepares the sewage sludge, the owner/operator shall submit the information in Paragraph H.1 of this Section to the administrative authority on February 19 of each year.

2. The owner/operator of a sewage sludge incinerator shall submit the information in Subparagraphs H.2.a-q of this Section to the administrative authority on February 19 of each year.

3. In addition to the reporting requirements in Paragraphs I.1 and 2 of this Section, the owner/operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator subject to the provisions of this Chapter shall submit to the administrative authority on February 19 and August 19 of each year (semiannually) a report in writing that contains the following:

a. a record of average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The percent reduction in scrubber pressure drop for which a report is required shall be determined as follows:

i. for incinerators that achieved an average particulate matter emission rate of 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input or less during the most recent performance test, a scrubber pressure drop reduction of more than 30 percent from the average scrubber pressure drop recorded during the most recent performance test shall be reported; and

ii. for incinerators that achieved an average particulate matter emission rate of greater than 0.38 kg/mg (0.75 lb/ton) dry sewage sludge input during the most recent

performance test, a percent reduction in pressure drop greater than that calculated according to the following equation shall be reported:

$$P = -111E + 72.15$$

where:

P = percent reduction in pressure drop

E = average particulate matter emissions (kg/megagram)

b. a record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more than 3 percent.

4. The owner or operator of any multiple hearth, fluidized bed, or electric sewage sludge incinerator from which the average particulate matter emission rate measured during the performance test required at Paragraph C.4 of this Section exceeds 0.38 g/kg of dry sewage sludge input (0.75 lb/ton of dry sewage sludge input) shall include in the report for each calendar day that a decrease in scrubber pressure drop or increase in oxygen content of exhaust gas is reported, a record of the following:

a. scrubber pressure drop averaged over each 1-hour incinerator operating period;

b. oxygen content in the incinerator exhaust averaged over each 1-hour incinerator operating period;

c. temperatures of every hearth in multiple hearth incinerators, the bed and outlet of fluidized bed incinerators, and the drying, combustion, and cooling zones of electric incinerators averaged over each 1-hour incinerator operating period;

d. rate of sewage sludge charged to the incinerator averaged over each 1-hour incinerator operating period;

e. incinerator fuel use averaged over each 8-hour incinerator operating period; and

f. moisture and volatile solids content of the daily grab sample of sewage sludge charged to the incinerator.

5. The owner or operator of any sewage sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sewage sludge incinerator equipped with a control device other than a wet scrubber shall include in the semiannual report a record of control device operation measurements, as specified in the plan approved under Paragraph C.5 of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§7313. Standard Conditions Applicable to All Sewage Sludge and Biosolids Use or Disposal Permits

A. General Conditions

1. Incorporation of Provisions. In accordance with the provisions of this Chapter all Sewage Sludge and Biosolids Use or Disposal Permits shall incorporate either expressly or by reference all conditions and requirements applicable to the preparation and use or disposal of sewage sludge set forth in the Louisiana Environmental Quality Act, as amended, as well as all applicable regulations.

2. Duty to Comply. The permittee must comply with all conditions of an issued final permit. Any permit

noncompliance constitutes a violation of the Louisiana Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. Enforcement Actions

a. The department may take enforcement action as prescribed by state law or regulation against any person who:

i. fails to submit a permit application as required by law;

ii. knowingly makes any false statement, representation, or certification in any application, record, report, or other document filed with the department pursuant to the Act or these regulations. Violations of this provision may subject the violator to the penalties provided for in the Act for perjury or false statements;

iii. fails to correct deficiencies in the permit application, or upon becoming aware that any relevant facts or information were omitted in a permit application or in any report to the department, fails to promptly submit such facts or information;

iv. fails to take any necessary action to complete the permit issuance, such as payment of fees or publication of required notices; or

v. fails to comply with any condition of the permit.

b. In cases where an application for a Sewage Sludge and Biosolids Use or Disposal Permit is withdrawn by the applicant, a written notification shall be provided to the Office of Environmental Services stating that no sewage sludge use or disposal practice or other activity that would require a permit from the Office of Environmental Services is currently taking place. Provided that the application was not made in response to previous enforcement action, the applicant is then exempt from enforcement action for causes listed under this Paragraph.

4. Toxic Pollutants

a. If any sewage sludge use or disposal standard or prohibition is promulgated under this Chapter or Section 405 of the Clean Water Act for a pathogen or pollutant, or concerning vector attraction reduction, management practices, etc., and that standard or prohibition is more stringent than any applicable requirement in an existing permit, the administrative authority shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the sewage sludge use or disposal standard or prohibition.

b. The permittee shall comply with sewage sludge use or disposal standards or prohibitions established under this Chapter within the time frame provided in the regulations that establish these standards or prohibitions, even if the permit has not been modified to incorporate the requirement.

5. Duty to Reapply for an Individual Permit. If the permittee wishes to continue an activity regulated by an existing permit after the expiration date of that permit, the permittee must apply for and obtain a new permit. The new application shall be submitted at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the administrative authority. (The administrative authority shall not grant permission for applications to be submitted later than the expiration date of

the existing permit.) A permit that was issued in accordance with these regulations and that has expired shall be administratively continued until such time as a decision on an application to continue an activity under the permit has been issued by the administrative authority, if the application was received by the department at least 180 days prior to the permit expiration.

6. Permit Action. The conditions set forth in LAC 33:IX.2903, 2905, 2907, 3105, and 6509 as causes for modification, revocation and reissuance, and termination of a permit shall apply to permits issued in accordance with these regulations.

7. Property Rights. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to Provide Information. The permittee shall furnish to the administrative authority, within a reasonable time, any information that the administrative authority requests to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the administrative authority, upon request, copies of records required to be kept by the permit.

9. State Laws. Nothing in the permit shall be construed to preclude the institution of any legal action, or to relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.

10. Severability. If any provision of these regulations, or the application thereof, is held to be invalid, the remaining provisions of these regulations shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these regulations are declared to be severable.

11. Draft Permits. The conditions set forth in LAC 33:IX.3107 for draft permits shall also pertain to permits issued in accordance with these regulations.

12. Fact Sheet. A fact sheet shall be prepared for each draft permit issued in accordance with these regulations. The contents of the fact sheet shall include, but not be limited to, the following:

- a. the name of the applicant;
- b. the name of the facility;
- c. the address of the facility;
- d. the physical location of all facilities that are utilized to prepare sewage sludge or biosolids;
- e. the physical location of all land application sites;
- f. general and management practices;
- g. soil and site restrictions;
- h. monitoring, sampling and analysis, and reporting requirements; and
- i. all other information that is pertinent to the facility and to the permitting process.

13. Public Notice of Permit Actions and Public Comment Period. The conditions set forth in LAC 33:IX.3113 and 6521 for public notices and the public comment period shall apply to all permits issued in accordance with these regulations.

14. Public Comments and Requests for Public Hearings. The conditions set forth in LAC 33:I.1505 and IX.3115 for public comments and requests for public

hearings shall apply to all permits issued in accordance with these regulations.

15. Public Hearings. The conditions set forth in LAC 33:IX.3117 for public hearings shall apply to all permits issued in accordance with these regulations.

16. Obligations to Raise Issues and Provide Information During the Public Comment Period. The conditions set forth in LAC 33:IX.3119 for the obligations to raise issues and provide information during the public comment period shall apply to all permits issued in accordance with these regulations.

17. Reopening of the Public Comment Period. The conditions set forth in LAC 33:IX.3121 for reopening of the public comment period shall apply to all permits issued in accordance with these regulations.

18. Issuance of a Final Permit Decision. After the close of the public comment period under Paragraph A.13 of this Section for a draft permit, the administrative authority shall issue a final permit decision. The administrative authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a Sewage Sludge and Biosolids Use or Disposal Permit. For the purposes of this Section a *final permit decision* means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

19. Response to Comments. The conditions set forth in LAC 33:IX.3125 for responding to comments shall apply to all permits issued in accordance with these regulations.

B. Proper Operation and Maintenance

1. Need to Halt or Reduce Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

2. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any sewage sludge use or disposal practice in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment. The permittee shall also take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including putting into effect such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying practice.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes employing adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

b. The permittee shall provide an adequate operating staff that is duly qualified to carry out operation and maintenance and other functions necessary to ensure compliance with the conditions of the permit.

C. Monitoring and Records

1. Inspection and Entry. The conditions set forth in LAC 33:IX.6513 for inspection and entry shall apply to all permits issued in accordance with these regulations.

2. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under LAC 33:IX.7301.I or, unless otherwise specified in 40 CFR Part 503, as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the sludge reporting form specified by the administrative authority.

3. Laboratory Accreditation

a. LAC 33:I.Chapters 45-59 provide requirements for an accreditation program specifically applicable to commercial laboratories, wherever located, that provide chemical analyses, analytical results, or other test data to the department, by contract or by agreement, and the data is:

- i. submitted on behalf of any facility, as defined in R.S. 30:2004;
- ii. required as part of any permit application;
- iii. required by order of the department;
- iv. required to be included on any monitoring report submitted to the department;
- v. required to be submitted by a contractor; or
- vi. otherwise required by department regulations.

b. The department laboratory accreditation program is designed to ensure the accuracy, precision, and reliability of the data generated, as well as the use of department-approved methodologies in generation of that data. Laboratory data generated by commercial environmental laboratories that are not accredited under these regulations will not be accepted by the department. Retesting and re-analyses by an accredited commercial laboratory will be required. Where retesting is not possible, the data generated will be considered invalid and in violation of the Sewage Sludge and Biosolids Use or Disposal Permit.

c. The regulations and guidelines on the environmental laboratory accreditation program and a list of laboratories that have applied for accreditation are available on the department's website. Questions concerning the program may be directed to the Office of Environmental Assessment.

D. Reporting Requirements

1. Facility Changes. The permittee shall give notice to the Office of Environmental Services as soon as possible of any planned physical alterations or additions to the permitted facility.

2. Anticipated Noncompliance. The permittee shall give advance notice to the Office of Environmental Services of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

3. Transfers. A permit is not transferable to any person except after notice to the Office of Environmental Services. The administrative authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act. Except as provided in LAC 33:IX.2901.A, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the

new permittee and incorporate such other requirements as may be necessary under the Louisiana Environmental Quality Act.

4. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of a permit shall be submitted no later than 14 days following each schedule date.

5. Other Noncompliance. The permittee shall report all instances of noncompliance not reported under Paragraph D.4 of this Section at the time monitoring reports are submitted.

6. Other Information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the administrative authority, it shall promptly submit the omitted facts or correct information.

7. Signatory Requirements. All applications, reports, or information submitted to the administrative authority shall be signed and certified.

a. All permit applications shall be signed as follows:

i. for a corporation—by a responsible corporate officer. For the purposes of this Section, a *responsible corporate officer* means:

(a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. These responsible corporate officers are presumed to have the authority to sign permit applications unless the corporation has notified the administrative authority to the contrary; or

(b) the manager of one or more manufacturing, production, or operating facilities, provided that the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term compliance with environmental laws and regulations; the manager has the authority to ensure that the necessary systems are established or actions are taken to gather complete and accurate information for permit application requirements; and the authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals;

ii. for a partnership or sole proprietorship—by a general partner or the proprietor, respectively; or

iii. for a municipality or a state, federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this Paragraph, a principal executive officer of a federal agency includes:

(a) the chief executive officer of the agency; or

(b) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

b. All reports required by permits, and submission of other information requested by the administrative authority, shall be signed by a person described in Subparagraph D.7.a of this Section, or by a duly authorized representative of that person. For the purposes of this Subparagraph, a person is a *duly authorized representative* only if:

i. his or her authorization has been made in writing by a person described in Subparagraph D.7.a of this Section;

ii. the authorization specifies either an individual or a position now having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and

iii. the written authorization is submitted to the administrative authority.

c. Changes to Authorization. If an authorization under Subparagraph D.7.b of this Section is no longer accurate because a different individual or position now has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Subparagraph D.7.b of this Section must be submitted to the administrative authority prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing a document under the provisions of Subparagraph D.7.a or b of this Section shall make the following certification.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8. Availability of Reports. All recorded information concerning permits and permit applications under this Chapter (completed permit application forms, fact sheets, draft permits, or any public document) not classified as confidential information under R.S. 30:2030(A) and 2074(D) and designated as such in accordance with LAC 33:IX.2323.A and C and LAC 33:IX.6503 shall be made available to the public for inspection and copying during normal working hours in accordance with the Public Records Act, R.S. 44:1 et seq. Claims of confidentiality for the following will be denied:

a. the name and address of any permit applicant or permittee;

b. permit applications, permits, and effluent data; and

c. information required by the Sewage Sludge and Biosolids Use or Disposal Permit application forms provided by the administrative authority. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

Subchapter B. Appendices

§7395. Financial Assurances Documents—Appendices

A, B, C, D, E, F, G, H, I, and J [Formerly §7135]

A. Appendix A—Liability Endorsement

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE

LIABILITY ENDORSEMENT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,
Water Permits Division

Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be either the permit holder, the applicant, or the operator. (Note: The operator will provide the liability-insurance documentation only when the permit holder/applicant is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial responsibility is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.2. The coverage applies at [list the site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1)-(5), below, are hereby amended to conform with Subclauses (1)-(5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.7307.A.2.d, e, or f.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] at [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.7307.A.2.b, effective on the date first written above and that insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

B. Appendix B—Certificate of Insurance

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE

CERTIFICATE OF LIABILITY INSURANCE

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,
Water Permits Division

Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be either the permit holder or applicant of the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.2. The coverage applies at [list agency interest number(s), site name(s), facility name(s), facility permit number(s), and site address(es)] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.7307.A.2.d, e, or f.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.7307.A.2.c, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

C. Appendix C—Letter of Credit

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,
Water Permits Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [permit holder's or applicant's name and address] for its [list site identification number(s), site name(s), facility name(s), and facility permit number(s)] at [location(s)], Louisiana, in favor of any governmental body, person, or other entity for

any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [permit holder's or applicant's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to the operation of the commercial preparer of sewage sludge facility or commercial land applier of biosolids land application site at the [name of permit holder or applicant] at [site location(s)] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.7307.A.2.d.v, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]
[date]

D. Appendix D—Trust Agreement

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE

TRUST AGREEMENT/STANDBY TRUST AGREEMENT

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

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

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

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

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

SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term "Grantor" means the permit holder or applicant who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

SECTION 4. PAYMENT FOR CLOSURE AND/OR POST-CLOSURE CARE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims, closure and/or post-closure] care of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims, closure and/or post-closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit

A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the state of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.B.3.i, on the date first written above.

WITNESSES:

Its: _____
[Seal]

TRUSTEE:

By: _____
Its: _____
[Seal]

THUS DONE AND PASSED in my office in _____, on the _____ day of _____, 20_____, in the presence of _____ and _____, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20_____, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the _____ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

NOTARY PUBLIC

E. Appendix E—Surety Bond

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE

FINANCIAL GUARANTEE BOND

Date bond was executed: _____

Effective date: _____

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

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name and business address]

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

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

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

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

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307, when a surety bond is used to provide such financial assurance;

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

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

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.7307.B and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

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

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

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

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

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

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.B and the conditions of the commercial preparer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.4.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETIES

[Name and Address]
State of incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[This information must be provided for each cosurety]
Bond Premium: \$ _____

F. Appendix F—Performance Bond

**COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE**

PERFORMANCE BOND

Date bond was executed: _____
Effective date: _____
Principal: [legal name and business address of permit holder or applicant]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety: [name(s) and business address(es)]
[agency interest number, site name, facility name, facility permit number, facility address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and/or post-closure costs separately)]
Total penal sum of bond: \$ _____
Surety's bond number: _____

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

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

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

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in Louisiana Administrative Code (LAC), Title 33, Part IX.7307.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.7305.C.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.7305.C.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform

post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.7307.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

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

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

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

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.B and the conditions of the commercial preparer of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7307.B.5.h, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY

[Name and address]
State of incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

G. Appendix G—Letter of Credit

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services,

Water Permits Division

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the state of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the [closure and/or post-closure] fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars \$ _____ upon presentation of:

(i).A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(ii).A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder or applicant], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the [insert "the most recent addition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"], shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.B.6.h, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]
[date]

H. Appendix H—Certificate of Insurance

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
APPLICATION SITE

CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE

Name and Address of Insurer: _____
(hereinafter called the "Insurer")
Name and Address of Insured: _____
(hereinafter called the "Insured")
(Note: Insured must be the permit holder or applicant.)

Facilities covered: [list the agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure and/or post-closure care] (These amounts for all facilities must total the face amount shown below.)

Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure and/or post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.7307.B, as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana and that the wording of

this certificate is identical to the wording specified in LAC 33:IX.7307.B.7.j, effective on the date shown immediately below.

[Authorized signature of Insurer]
 [Name of person signing]
 [Title of person signing]
 Signature of witness or notary: _____
 [Date]

I. Appendix I—Letter from the Chief Financial Officer

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR
 COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND
 APPLICATION SITE

LETTER FROM THE CHIEF FINANCIAL OFFICER
 (LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE)

Secretary
 Louisiana Department of Environmental Quality
 Post Office Box 4313
 Baton Rouge, Louisiana 70821-4313
 Attention: Office of Environmental Services,
 Water Permits Division

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage," "closure," and/or "post-closure," as applicable] as specified in [insert "Louisiana Administrative Code (LAC), Title 33, Part IX.7307.A," "LAC 33:IX.7307.B," or "LAC 33:IX.7307.A and B"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.7307.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which financial assurance for [insert "closure," "post-closure care," or "closure and post-closure care"] is demonstrated through a financial test similar to that specified in LAC 33:IX.7307.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.7307.B" or "LAC 33:IX.7307.A and B"], [insert "liability coverage," "closure," "post-closure care," or "closure and post-closure care"] of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial preparer of sewage sludge facility, whether in the state of Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.7307.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently-audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES
 [Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

Alternative I		
1. Amount of annual aggregate liability coverage to be demonstrated	\$	
*2. Current assets	\$	
*3. Current liabilities	\$	
*4. Tangible net worth	\$	
*5. If less than 90 percent of assets are located in the U.S., give total U.S. assets	\$	
	YES	NO
6. Is line 4 at least \$10 million?		
7. Is line 4 at least 6 times line 1?		
*8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9.		
9. Is line 4 at least 6 times line 1?		

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

Alternative II		
1. Amount of annual aggregate liability coverage to be demonstrated	\$	
2. Current bond rating of most recent issuance of this firm and name of rating service		
3. Date of issuance of bond		
4. Date of maturity of bond		
*5. Tangible net worth	\$	
*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$	
	YES	NO
7. Is line 5 at least \$10 million?		
8. Is line 5 at least 6 times line 1?		
*9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10.		
10. Is line 6 at least 6 times line 1?		

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure and/or post-closure care.]

PART B. CLOSURE AND/OR POST CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

Alternative I		
1. Sum of current closure and/or post-closure estimate (total all cost estimates shown above)	\$	
*2. Tangible net worth	\$	
*3. Net worth	\$	
*4. Current Assets	\$	
*5. Current liabilities	\$	
*6. The sum of net income plus depreciation, depletion, and amortization	\$	
*7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	\$	
	YES	NO
8. Is line 2 at least \$10 million?		
9. Is line 2 at least 6 times line 1?		
*10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11.		
11. Is line 7 at least 6 times line 1?		

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

Alternative II		
1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown above)	\$	
2. Current bond rating of most recent issuance of this firm and name of rating service		
3. Date of issuance of bond		
4. Date of maturity of bond		

Alternative II		
*5. Tangible net worth (If any portion of the closure and/or post-closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line.)	\$	
*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.)	\$	
	YES	NO
7. Is line 5 at least \$10 million?		
8. Is line 5 at least 6 times line 1?		
9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10.		
10. Is line 6 at least 6 times line 1?		

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage, closure, and/or post-closure care.]

PART C. LIABILITY COVERAGE, CLOSURE AND/OR POST-CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.7307.B.8.a.i are used.]

Alternative I		
1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above)	\$	
2. Amount of annual aggregate liability coverage to be demonstrated	\$	
3. Sum of lines 1 and 2	\$	
*4. Total liabilities (If any portion of your closure and/or post-closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.)	\$	
*5. Tangible net worth	\$	
*6. Net worth	\$	
*7. Current assets	\$	
*8. Current liabilities	\$	
*9. The sum of net income plus depreciation, depletion, and amortization	\$	
*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$	
	YES	NO
11. Is line 5 at least \$10 million?		
12. Is line 5 at least 6 times line 3?		
*13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14.		
14. Is line 10 at least 6 times line 3?		

[Fill in Alternative II if the criteria of LAC 33:IX.7307.B.8.a.ii are used.]

Alternative II		
1. Sum of current closure and/or post-closure cost estimates (total of all cost estimates listed above)	\$	
2. Amount of annual aggregate liability coverage to be demonstrated	\$	
3. Sum of lines 1 and 2	\$	
4. Current bond rating of most recent issuance of this firm and name of rating service		
5. Date of issuance of bond		
6. Date of maturity of bond		
*7. Tangible net worth (If any portion of the closure and/or post-closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.)	\$	
*8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	\$	
	YES	NO
9. Is line 7 at least \$10 million?		
10. Is line 7 at least 6 times line 3?		

Alternative II		
*11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12.		
12. Is line 8 at least 6 times line 3?		

(The following is to be completed by all firms providing the financial test)
I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.7307.B.8.d.

[Signature of chief financial officer for the firm]
[Typed name of chief financial officer]
[Title]
[Date]

J. Appendix J—Corporate Guarantee

COMMERCIAL PREPARER OF SEWAGE SLUDGE FACILITY OR COMMERCIAL LAND APPLIER OF BIOSOLIDS LAND APPLICATION SITE

CORPORATE GUARANTEE FOR LIABILITY COVERAGE, CLOSURE, AND/OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.B.8.i.

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"], hereinafter referred to as [insert "permit holder" or "applicant"], for the following commercial preparer of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.7305.C.3, for the closure and/or post-closure care of the facility identified in Paragraph (B) above.

(D). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that [insert "permit holder" or "applicant"] fails to perform [insert "closure," "post-closure care," or "closure and post-closure care"] of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.7307.B.3, as applicable, in the name of [insert "permit holder" or "applicant"] in the amount of the current closure and/or post-closure estimates as specified in LAC 33:IX.7307.B.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from [insert "permit holder" or "applicant"], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that [insert "permit holder" or "applicant"] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facility, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the administrative authority and to [insert "permit holder" or "applicant"] that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, in the name of the [insert "permit holder" or "applicant"]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [insert "permit holder" or "applicant"] has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" or "closure and/or post-closure care"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, in the name of [insert "permit holder" or "applicant"] unless [insert "permit holder" or "applicant"] has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure and post-closure, insert "amendment or modification of the closure and/or post-closure care, the extension or reduction of the time of performance of closure and/or post-closure", or any other modification or alteration of an obligation of the [insert "permit holder" or "applicant"] pursuant to LAC 33:IX.7305.C.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the [insert "permit holder" or "applicant"] must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"] for the above-listed facility, except that guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the [insert "permit holder" or "applicant"], such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the [insert "permit holder" or "applicant"], as evidenced by the return receipts.

(K). The guarantor agrees that if the [insert "permit holder" or "applicant"] fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.A" and/or "LAC 33:IX.7307.B"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from guarantor, guarantor shall provide such alternate financial assurance in the name of the [insert "permit holder" or "applicant"].

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the [insert "permit holder" or "applicant"]. Guarantor expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.7307.B.8.i, effective on the date first above written.

Effective date: _____
 [Name of Guarantor]
 [Authorized signature for guarantor]
 [Typed name and title of person signing]
 Thus sworn and signed before me this [date].

 Notary Public

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§7397. Procedure to Determine the Annual Whole Biosolids Application Rate (AWBAR)—Appendix K [Formerly §7131]

A. LAC 33:IX.7303.E.1.d.ii requires that the product of the concentration for each pollutant listed in Table 4 of LAC 33:IX.7303.E in biosolids sold or given away in a bag or other container for application to the land and the annual whole biosolids application rate (AWBAR) not cause the annual pollutant loading rate for the pollutant in Table 4 of LAC 33:IX.7303.E to be exceeded. This Appendix contains the procedure used to determine the AWBAR for a sewage sludge that does not cause the annual pollutant loading rates in Table 4 of LAC 33:IX.7303.E to be exceeded.

B. The relationship between the annual pollutant loading rate (APLR) for a pollutant and the AWBAR is shown in Equation (1).

$$APLR = C \times AWBAR \times 0.001 \quad \text{Equation (1)}$$

where:

- APLR = annual pollutant loading rate in kilograms per hectare per 365-day period
- C = pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
- AWBAR = annual whole biosolids application rate in metric tons per hectare per 365-day period (dry weight basis)
- 0.001 = a conversion factor

C. To determine the AWBAR, Equation (1) is rearranged into Equation (2).

$$AWBAR = \frac{APLR}{C \times 0.001} \quad \text{Equation (2)}$$

D. The procedure used to determine the AWBAR is presented below.

1. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of LAC 33:IX.7303.E in the biosolids.

2. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of LAC 33:IX.7303.E, calculate an AWBAR for each pollutant using Equation (2) above.

3. The AWBAR for the biosolids is the lowest AWBAR calculated in Step 2.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§7399. Pathogen Treatment Processes—Appendix L [Formerly §7133]

A. Processes to Significantly Reduce Pathogens (PSRP)

1. Aerobic Digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. Air Drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. Anaerobic Digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35° to 55°C and 60 days at 20°C.

4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime Stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

B. Processes to Further Reduce Pathogens (PFRP)

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow

composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat Drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10 percent or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat Treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic Aerobic Digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55° to 60°C.

5. Beta Ray Irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

6. Gamma Ray Irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as ⁶⁰Cobalt and ¹³⁷Cesium, at dosages of at least 1.0 megarad at room temperature (approximately 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on July 25, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS066. Such comments must be received no later than August 1, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS066. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive,

Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Standards for the Use or Disposal of
Sewage Sludge and Biosolids**

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

The proposed rule will have no implementation cost or savings to the state.

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

Only new facilities coming into the universe of affected facilities will submit the standard fees assessed by the program. An estimate of these revenues would be difficult to calculate due to an uncertainty of the number of new sources that may begin operation after promulgation of the rule.

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

There is no anticipated effect upon individuals or non-governmental groups. These regulations have been in effect at the federal level since 1993.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition or employment from this proposed rule is anticipated because equivalent regulations of the area currently exist at both the state and federal level.

Herman Robinson, CPM
Executive Counsel
0706#013

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

USTs Delivery Prohibition
(LAC 33:XI.401 and 403) (UT015)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Underground Storage Tanks regulations, LAC 33:XI.401 and 403 (Log #UT015).

The proposed rule establishes standards for the red tag/delivery prohibition of regulated substances for underground storage tanks (USTs). It sets forth the requirements the owner/operator of the UST must meet in order to continue to receive delivery of fuel, and for when the department may prohibit the delivery of fuel. The 2005 Underground Storage Tank Compliance Act, which amends Section 9003 in Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to establish

delivery prohibition of regulated substances for USTs that have not met the required 1998 standards or are not compliant with spill prevention, overflow protection, release detection, corrosion protection, or registration requirements. This action must be implemented to maintain funding of the UST program in the state and to provide a serious consequence to those owners and operators that continue to be out of compliance with the regulations. This action will further enhance our effort to maintain protection of human health and the environment. The basis and rationale for this rule are to prevent contamination to the environment from underground storage tanks.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part XI. Underground Storage Tanks

Chapter 4. 2005 Federal Underground Storage Tank Compliance Act Mandated Requirements

§401. Purpose

A. This Chapter implements requirements mandated by the Underground Storage Tank Compliance Act, 42 U.S.C. 6991.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank Systems

A. Underground storage tank (UST) systems, except for those systems deferred or exempted from specified Chapters and Sections of these regulations in accordance with LAC 33:XI.101.C, that do not meet any one of the following requirements, upon discovery by the department, shall be subject to the status of red tag/delivery prohibition of regulated substances:

1. installation of spill prevention equipment in accordance with LAC 33:XI.Chapter 3;
2. installation of overflow protection equipment in accordance with LAC 33:XI.Chapter 3;
3. establishment of release detection methods or installation of release detection equipment in accordance with LAC 33:XI.Chapter 7;
4. installation of corrosion protection equipment in accordance with LAC 33:XI.Chapter 3;
5. compliance with LAC 33:XI.301.C.4; or
6. upon evidence of a below-surface release from an UST system, initiation by the owner/operator of release investigation and confirmation steps in accordance with LAC 33:XI.711, or compliance with the release response and corrective action requirements in LAC 33:XI.715.

B. Noncompliance with these regulations as listed in this Subsection shall result in a red tag/delivery prohibition of regulated substances if response action is not taken by the owner/operator within 30 days of receipt of written notification by the department to the owner/operator. Response action will be considered as taken if the owner/operator has contracted and scheduled the action to

take place within those 30 days and the response action has been initiated within 60 days of receipt of the written notification. The forms of noncompliance are:

1. failure to properly operate and/or maintain release detection equipment in accordance with LAC 33:XI.Chapter 7. Failure to provide records, within 10 days of request by the department, showing proper operation and/or maintenance of release detection equipment shall be considered a failure to properly operate and/or maintain the release detection equipment;

2. failure to properly operate and/or maintain spill, overflow, or corrosion protection equipment in accordance with LAC 33:XI.Chapter 5. Failure to provide records, within 10 days of request by the department, showing the type of spill, overflow, or corrosion protection equipment installed and the proper operation and/or maintenance of spill, overflow, or corrosion protection equipment shall be considered a failure to properly operate and/or maintain the spill, overflow, or corrosion protection equipment;

3. failure to maintain financial responsibility in accordance with LAC 33:XI.Chapter 11;

4. failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances in accordance with LAC 33:XI.303.B.2 and C.4. Failure to produce records, within 10 days of request by the department, showing procedures and/or practices designed to protect from corrosion buried metal piping and/or components that routinely contain regulated substances shall be considered a failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances.

C. It shall be unlawful for any person to place, or allow the placement of, a regulated substance into an UST that the department has red tagged/prohibited from delivery of regulated substances under Subsection A or B of this Section. The department may use its discretion in determining whether a non-delivery due to a red tag/delivery prohibition of regulated substances may jeopardize the availability of, or access to, motor fuel in remote areas of the state or in cases where an emergency declaration is in effect. When the department determines that red tagging/delivery prohibition will jeopardize the availability of, or access to, regulated substances, specifically motor fuels, in remote areas or in cases of an emergency declaration, it may allow for continued delivery of regulated substances, for up to 180 days, to an UST that has failed to have equipment required under Subsection A of this Section installed or that has been deemed noncompliant by the department under Subsection B of this Section.

D. The department shall provide adequate notice to UST system owners/operators and regulated substance deliverers that an UST has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance. Placing or allowing placement of a regulated substance into an UST determined ineligible for delivery, deposit, or acceptance of a regulated substance constitutes a violation of this Section.

E. The owner/operator of an UST that has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance must make the necessary system repairs or upgrades, or remedy any form of noncompliance, and must be cleared of the red tag/delivery

prohibition in writing by the department, or a person authorized by the department, in order to be removed from the red tag listing and be deemed eligible for delivery of regulated substances. The department, or a person authorized by the department, shall remove the red tag/delivery prohibition status for an UST system within two working days after compliance and/or upgrade or repair has been demonstrated.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on July 25, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT015. Such comments must be received no later than August 1, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT015. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: USTs Delivery Prohibition

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

Initially the department will experience an increase in workload from setting up a database to track red-tagged underground storage tanks (USTs), the tagging and removal of tags, and other procedural aspects of program implementation. This effort is minimized by the fact that inspections are currently being performed, with follow-up inspections where problems are noted.

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

There will be no effect on revenue collections for state or local governmental units.

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

Owners and operators of USTs that are not upgraded or are in violation of the 1998 requirements, and motor fuel distributors to those owners and operators, will be affected by this proposed rule. Owners and operators will not be able to receive additional motor fuel until they bring their USTs into compliance with the regulations. This will affect the owners' and operators' business operations until their USTs are in compliance. The motor fuel distributors will be impacted by the loss of a sale to these owners and operators. It is important to note that owners/operators found in violation and that are red-tagged have been operating outside the regulations and have avoided costs that other tank owners/operators incurred quite some time ago.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment should not be affected by the proposed action under the presumption that there are not a high percentage of USTs that will be found noncompliant, since the requirements have been in effect since 1998. However, other UST facilities in the area of a red-tagged UST could see higher sales during the period of time the red-tagged UST is undergoing remedial action. Some red-tagged UST facilities may choose not to upgrade due to the cost of the upgrade or other compliance issues and may close their facilities. Loss of jobs may occur from the closing of a facility, but business competition may increase from customers looking for a new facility from which to purchase motor fuel.

Herman Robinson, CPM
Executive Counsel
0706#018

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Practical Nurse Examiners

Curriculum Requirements
(LAC 46:XLVII.927, 929, 931, and 933)

The Board of Practical Nurse Examiners proposes to amend LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979.

The proposed Rule change is to update and clarify requirements for curriculum development and implementation in practical nursing programs. In addition, while the total number of instructional hours has been maintained, the requirement for a minimum number of hours of instruction in each course has been removed. This is to allow greater flexibility and creativity in curriculum design.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 1. Practical Nurses

Chapter 9. Program Projection

Subchapter E. Curriculum Requirements

§927. Development

A. The curriculum shall be developed and written by the nursing faculty and shall include the philosophy and objectives of the program. Curriculum development and

revision shall consider current concepts in health care and health care delivery systems. The evolution of the role of the practical nurse shall influence the curriculum. The curriculum and all curriculum revisions shall be approved by the board prior to implementation.

B. The curriculum shall ensure that program graduates possess the knowledge, skill, ability, and clinical competency to practice safely and effectively as an entry level practical nurse in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and R.S. 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:196 (April 1977), amended LR 8:65 (February 1982), LR 10:339 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 33:

§929. Outline and Rotation Plan

A. A copy of the current board approved curriculum and a copy of the master rotation plan shall be available to the board on request.

B. The master rotation plan for each class shall provide the starting date, course of study, clinical practice areas and scheduled rotations, class schedule, and completion date. The master rotation plan and any revisions to the plan shall be approved by the board prior to implementation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and R.S. 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:195 (April 1977), amended LR 10:339 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 33:

§931. Length of Program

A. A program shall be of sufficient length to ensure that graduates meet the objectives of the program and are clinically competent.

B. A program shall cover a minimum of 1,500 clock hours or an equivalent number of credit hours of scheduled instruction. At least 700 clock hours or an equivalent number of credit hours shall be the minimum number of theory hours and at least 800 clock hours or an equivalent number of credit hours shall be the minimum number of clinical hours.

C. Theory and clinical experience should be concurrent or sequential, progressing from the simple to the complex.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:196 (April 1977), amended LR 8:65 (February 1982), LR 10:339 (April 1984), LR 10:915 (November 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1127 (October 1992), repromulgated LR 18:1260 (November 1992), amended LR 33:

§933. Curriculum

A. The curriculum shall include instruction in the following basic arts and sciences.

1. Body Structure and Function—providing an understanding of the basic anatomy and physiology of the human body and deviations from the normal.

2. Introduction to Microbiology—providing a basic understanding of microbes including their role in health and illness, modes of transmission, reproduction, and methods of control or destruction, with an instructional focus on concepts essential for the safe performance of nursing

procedures and for the prevention of illness and/or the transfer of disease to others.

3. Introduction to Practical Nursing—providing instruction and guidance in the identification and personal development of those qualities and personal characteristics needed to practice practical nursing safely, effectively, and with compassion, including increased and ongoing development of self awareness, sound judgment, prudence, ethical thinking and behaviors, problem solving and critical thinking abilities. This course also provides instruction in the history, trends and the evolution of practical nursing, information related to practical nursing organizations, and an introduction to the laws and rules governing practical nursing practice in Louisiana (the Revised Statutes, Title 37, Chapter 11, Subpart II, Practical Nurses and LAC 46:XLVII, Nurses, Subpart 1, Practical Nurses).

4. Personal, Family and Community Health—providing concepts of personal and family growth and development and an understanding of the unique manner in which people build and define relationships, families, and communities. Instruction is designed to assist the student to identify and respect the unique abilities and qualities of people as they participate and function in society. The student is made aware of the rights of clients to make their own health care decisions and the student learns how to support client decisions through the utilization of local, state and national health resources. Students are guided in coursework designed to increase awareness of and respect for variations in cultural, religious, spiritual, educational, and socio-economic histories and experiences. The student begins to understand how these variations impact health, illness and client participation in the health care delivery system.

5. Nutrition and Diet Therapy—describing concepts of proper nutrition for all age groups and addressing diet modifications for therapeutic purposes.

6. Pharmacology—presenting concepts relating to drug classification, action, dosage, dosage calculation, intended effects, side effects and adverse effects, as well as concepts relating to teaching clients, family, and others about the effects of medications. Instruction provides an opportunity for the development of competence in skills needed in the preparation, administration, documentation, and safe storage of medications.

7. Principles and Practices of Nursing—presenting the application of concepts which will provide basic principles of nursing care and correlated experiences to develop competency in medical-surgical nursing, geriatric nursing, obstetrical nursing, pediatric nursing and mental health nursing. Clinical experience shall include, but not be limited to, the performance of basic and advanced nursing skills, general health and physical assessment, critical thinking and clinical problem solving, medication administration, IV therapy, patient education, health screening, health promotion, health restoration and maintenance, supervision and management, safety and infection control, communication and documentation, and working as a member of an interdisciplinary health care team.

8. Career Readiness—presenting information relating to all aspects of gaining and maintaining a license to practice practical nursing, the nurse's personal accountability to maintain and continue to acquire the knowledge, skills and

abilities needed to practice safely, the qualities employers seek and the non-nursing employment skills, abilities, and personal characteristics needed to secure and maintain employment as a practical nurse. The student also develops a deeper understanding of the laws and rules governing practice, including R.S. 37, Chapter 11, Part II and LAC 46:XLVII, Subpart 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:196 (April 1977), amended LR 8:65 (February 1982), LR 10:339 (April 1984), LR 10:915 (November 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1127 (October 1992), repromulgated LR 18:1260 (November 1992), amended LR 33:

Family Impact Statement

The proposed amendments, to Part XLVII.Subpart 1, should not have any impact on family as defined by R.S. 49:972. There should not be any effect on: the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments until 3:30 p.m., July 10, 2007, to Claire Doody Glaviano, Board of Practical Nurse Examiners, 3421 N. Causeway, Ste. 505, Metairie, LA 70002.

Claire Doody Glaviano
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Curriculum Requirements

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

Other than the rule publication costs, which are estimated to be \$200.00 in fiscal year 2007, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Practical Nurse Examiners, any state unit or local governmental unit.

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

The proposed rule will have no effect on revenue collections of state or local governmental units.

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

The proposed rule will have no significant effect on costs and/or economic benefits to directly affected persons, or nongovernmental groups. The proposed rule change updates language, and clarifies the requirements for curriculum development and implementation in Louisiana practical nursing programs. Course descriptions have been revised to more accurately reflect current education and practice, as well as to allow for increased flexibility and creativity in curriculum writing and revision. In addition, the minimum number of hours of instruction for each course has been removed. This will also provide faculty with a greater opportunity for creative curriculum design.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Claire Doody Glaviano, RN, MN
Executive Director
0703#003

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Practical Nurse Examiners

Faculty
(LAC 46:XLVII.901)

The Board of Practical Nurse Examiners proposes to amend LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979.

The purpose of the proposed Rule change is to establish new guidelines for the educational preparation and nursing experience of faculty hired to teach in practical nursing programs. These new guidelines remove language requiring faculty to attain a specific educational degree but maintain the requirements that faculty members have clinical experience providing direct patient care and be currently licensed to practice registered nursing in the state of Louisiana. The proposed Rule change also allows programs to hire faculty with specialized clinical experience. These changes give program administrators greater choice, control, and responsibility in hiring qualified faculty and in building a staff with the expertise needed to fulfill program objectives.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS PART XLVII. Nurses

Subpart 1. Practical Nurses

Chapter 9. Program Projection

Subchapter A. Faculty and Staff

§901. Faculty

A. The program shall have a faculty of sufficient size and expertise to fulfill the program objectives. At no time shall a faculty consist of less than two fulltime nurse members, one of whom shall be designated as coordinator/department head. Programs with two fulltime nurse faculty members shall admit a maximum of 36 students per class. The board may, upon application by the school administrator, permit program expansion. Expansion approval must be obtained in writing from the board.

B. Application and Qualifications

1. Application. Each applicant for a faculty position in a practical nursing program shall be approved by the Louisiana State Board of Practical Nurse Examiners prior to employment in the program.

2. Licensure. Each nurse faculty member shall hold a current, valid license to practice as a registered nurse in the state of Louisiana, which license shall be visually inspected

annually by the nurse coordinator/department head of the practical nursing program and the administrator of the school. The board may deny and/or rescind approval to a faculty applicant and/or current faculty member whose license has been or is currently being disciplined in any jurisdiction.

3. Nurse Coordinator/Department Head. The coordinator/department head shall be a registered nurse with a minimum of four years experience in medical-surgical nursing or nursing education. At least one of these four years must have been as a medical-surgical hospital staff nurse providing direct patient care. An applicant for nurse coordinator must have practiced as a nurse for a minimum of six full-time months during the three years immediately preceding application.

4. Nurse Instructor. A nurse instructor shall be a registered nurse with a minimum of three years of nursing experience. At least one of these three years must have been as a medical-surgical hospital staff nurse providing direct patient care. An applicant for nurse instructor must have practiced as a nurse for a minimum of six full-time months during the three years immediately preceding application.

5. Specialty Nurse Instructor. The board may consider an applicant for a specialty nurse instructor with experience in one of the clinical specialty areas (maternity, neonatal, pediatric, mental health) provided that this instructor is hired in addition to two full time nurse faculty members who meet the qualifications for nurse coordinator and/or nurse instructor. The specialty nurse instructor must have a minimum of four years of clinical experience in the specific specialty area. The specialty nurse instructor may be utilized only for instruction in the specific specialty area for which application was made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and R.S. 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:194 (April 1977), amended LR 5:355 (November 1979), LR 10:338 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 16:133 (February 1990), LR 18:1127 (October 1992), repromulgated LR 18:1260 (November 1992), amended LR 21:1244 (November 1995), LR 26:2617 (November 2000), LR 33:

Family Impact Statement

The proposed amendments, to Rule XLVII.Subpart 1, should not have any impact on family as defined by R.S. 49:972. There should not be any effect on: the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed rule.

Interested persons may submit written comments until 3:30 p.m., July 10, 2007, to Claire Doody Glaviano, Board of Practical Nurse Examiners, 3421 N. Causeway, Ste. 505, Metairie, LA 70002.

Claire Doody Glaviano
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Faculty

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

Other than the rule publication costs, which are estimated to be \$100.00 in fiscal year 2007, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Practical Nurse Examiners, any state unit or local governmental unit.

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

The proposed rule will have no effect on revenue collections of state or local governmental units.

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

The proposed rule will have no significant effect on costs and/or economic benefits to directly affected persons, or nongovernmental groups. The purpose of the proposed rule change is to establish new guidelines for the educational preparation and nursing experience of faculty hired to teach in practical nursing programs. These new guidelines remove language requiring faculty to attain a specific educational degree but maintain the requirements that faculty members have clinical experience providing direct patient care and be currently licensed to practice registered nursing in the state of Louisiana. The proposed rule change also allows programs to hire faculty with specialized clinical experience. These changes give program administrators greater choice, control, and responsibility in hiring qualified faculty and in building a staff with the expertise needed to fulfill program objectives.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Claire Doody Glaviano, MN, APRN
Executive Director
0706#004

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Social Work Examiners

Social Work (LAC 46:XXV.Chapters 1-7)

The Louisiana Board of Social Work Examiners intends to amend *Rules, Standards and Procedures* adopted in February 2000, which implement the Louisiana Social Work Practice Act, R.S. 37:2701-2721. The proposed amendments will apply to all credentialed social workers and amend §113, Social Work Relationships, §117, Conduct, §303, Practice, §305, Qualifications for Registration, Certification Licensure, §307, Administration of Examination, §309, Application Procedure, §311, Renewals and Cancellations, §313, Fees, §315, Board Members, §317, Continuing Education Requirements, §505, GSWs Seeking the LCSW Credential, §701, Impaired Professional Program, and Chapter IX, Procedural Rules.

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

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXV. Certified Social Workers

Chapter 1. Standards of Practice

§113. Social Work Relationships

A. - B.2. ...

3. Sexual Intimacy or Contact with a Client, Supervisee or Student. A social worker shall not engage in or request sexual intimacy or contact as defined in §113.B.5, with a client, a client's spouse or former spouse, any member of the client's immediate family or with any person with whom the client has a sexual relationship. The prohibition of this rule extends to supervisees and students during such times and under such circumstances where the social worker is in a supervisory or teaching relationship. This rule also expressly prohibits social workers from engaging in any behavior which a reasonable person would find sexually stimulating, seductive or sexually demeaning when such behavior is either directed toward or exhibited in the presence of any person with whom sexual contact is otherwise prohibited by this Rule. Social workers shall not sexually harass a client, supervisee or student.

4. Sexual Intimacy or Contact with a Former Client. A social worker who has provided clinical/therapeutic social work services, such as counseling or the diagnosis or treatment of mental and emotional disorders with individuals, couples, families, or treatment groups, shall not engage in or request sexual intimacy or contacts as defined in §113.B.5, is prohibited from engaging in or requesting sexual intimacy or contacts with a former client within five years from documented termination. Any social worker who engages in sexual intimacy or contacts as defined in §113.B.5 with a former client within five years of documented termination of services shall be subject to disciplinary action for violations under R.S. 37:2717(A)(4) and (7).

a. A social worker who engages in such sexual intimacy or contacts as defined in §113.B.5 after five years from the documented termination of services without first obtaining a consultation from an independent and unrelated LCSW, documenting the assessment of no exploitative potential or harm as required by this rule, shall be subject to disciplinary action for violations under R.S. 37:2717(A)(4) and (7). The consultation shall assess and document the lack of exploitative potential or harm from such sexual intimacy after considering the relevant factors and include the following:

- i. the amount of time that has passed since therapy terminated;
 - ii. the nature, duration, and intensity of the therapy;
 - iii. the circumstances of termination;
 - iv. the client's personal history;
 - v. the client's current mental status;
 - vi. the likelihood of adverse impact on the client;
- and
- vii. any statements or actions made by the therapist during the course of therapy suggesting or inviting the

possibility of a posttermination sexual or romantic relationship with the client.

b. A social worker who has provided nonclinical services to a client, such as resource/service brokerage, referral, consultation, training/skill development, or other services that are brief or indirect in nature, shall not enter into a sexual relationship with a former client upon the documented termination of services when a reasonable, prudent social worker would conclude after appropriate assessment that such would pose an unacceptable risk of harm to the client.

5. Sexual Intimacy or Contact Defined. Sexual intimacy or contact is defined as any contact or any other conduct which reasonably could lead to sexual arousal, whether verbal or nonverbal, including, but not limited to, sexual touching, sexual intercourse (i.e. genital, anal or oral), masturbation, , whether clothed or unclothed, by either the social worker or the client. Sexual intimacy also includes phone sex, cyber-sex and other electronic or printed communication which reasonably could lead to sexual arousal.

6. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:297 (February 2000), amended LR 29:2381 (November 2003), LR 33:

Chapter 3. General Provisions

§301. Definitions

Board Approved Supervision Workshop—this workshop shall be pre-approved by the board. At least six and 1/2 (6.5) clock hours required for workshop to be acceptable and shall deal with supervision models, the theory and techniques of supervision, record keeping, ethics and multicultural issues.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:300 (February 2000), amended LR 33:

§303. Practice

A. - C.4. ...

D. Graduate Social Workers and Provisional Graduate Social Workers may:

1. deliver those clinical services which constitute psychotherapy within an agency under the supervision of a licensed clinical social worker and shall meet the supervision requirements of §505.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:301 (February 2000), amended LR 29:2382 (November 2003), LR 33:

§305. Qualifications for Registration, Certification, Licensure

A. - D.6. ...

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners,

LR 26:301 (February 2000), amended LR 29:2383 (November 2003), LR 33:

§311. Renewals and Cancellation

A. Renewal notices are mailed on or before July 1 of each year. The renewal fee must be postmarked on or before August 31.

B. Licensed Clinical Social Workers must list those Graduate Social Workers under their supervision for licensure requirements and agency setting on their renewal form.

C. Twenty clock hours of continuing education in programs approved by the board shall be obtained prior to June 30 of each year. (See Rule No. 317 for rules on acceptable continuing education.)

D. A lapsed license, certificate or registration may be renewed without the lapsed fee between September 1 and November 30. Payment must be postmarked on or before November 30.

E. A lapsed license fee may be paid between December 1, and February 28, of each year and the license, certificate or registration will be renewed. The lapsed fee equals twice the amount of the renewal fee.

F. Without payment of the lapsed fee, the license, certification or registration is canceled after February 28, and a certified notice of cancellation is mailed. Payment must be postmarked on or before February 28.

G. It is the social workers responsibility to keep the board informed of his/her current mailing address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:304 (February 2000), amended LR 29:2384 (November 2003), LR 33:

§313. Fees

A. ...

* * *	
Lapsed Renewal Fee for LCSW (postmarked after November 30)	150
Lapsed Renewal Fee for GSW (postmarked after November 30)	100
Lapsed Renewal Fee for RSW (postmarked after November 30)	50
* * *	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:304 (February 2000), amended LR 29:2384 (November 2003), LR 33:

§315. Board Members

A. - B. ...

C. Meetings

1. The board shall schedule meetings for the following calendar year at the last meeting of the current year.

C.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:304 (February 2000), amended LR 29:2385 (November 2003), LR 33:

§317. Continuing Education Requirements

A. - A.2. ...

3. assisting the professional to expand his/her professional resource network.

B. - L.1.a. ...

b. ten clock hours each year shall be clinical content, including diagnosis and treatment;

c. to maintain the board approved clinical supervisor status, obtain three clock hours of continuing education in clinical supervision every two years, beginning July 1, 2008. These hours must be pre-approved by a LABSWE-designated pre-approval organization.

M. The following learning forums are approved for continuing education and must contain content applicable to social work practice:

1. educational offerings sponsored by or approved by social work licensing bodies, state and national professional social work organizations, and schools accredited by the Council on Social Work Education;

2. should the individual social worker make the determination that an education offering which is not pre-approved by one of the approval organizations has content applicable to social work practice, the *Guide for Assessment of Continuing Education* (§317.P) must be used. This document, as well as all the relevant course materials, and the certificate of completion should be maintained in the event you are audited;

3. distance learning (teleconferences, telecourses, home-study courses and internet courses) sponsored by entities listed in §317.M.1, or pre-approved by a LABSWE-authorized pre-approval organization cannot exceed a total of 10 clock hours of the required 20 clock hours of continuing education required annually for renewal of social work credentials;

4. continuing education activities or academic courses provided by accredited schools of social work. Academic course work counts per actual class hour;

5. presentations of content applicable to social work practice at professional conferences, staff development meetings, and other appropriate forums in which you are the primary presenter. These presentations count 1.5 times the actual time of the presentation, in order to give credit for preparation time. (Example: You prepare a presentation on Holiday Stress that lasts one hour. You will receive 1.5 hours continuing education credit for this presentation.) Presentation and preparation time may only be counted **once** for each topic. Academic preparation and teaching of social work content (undergraduate or graduate) may be counted **once** in the same manner, unless the course has been revised to include substantially new content and text books. Please be prepared to provide the exact nature of the content and presentation;

6. attendance at staff development presentations with content applicable to social work practice (such as staff meeting with a formal and in-depth presentation on working with clients who present borderline symptoms, etc.). Please be prepared to provide the presenter's name, credentials, date of presentation and nature of the content covered. Case based staffing meetings are not included as appropriate continuing education experiences;

7. attendance at professional social work meetings, Association of Social Work Boards (ASWB) item writing

workshops, symposiums, panel discussions, or conferences sponsored by the professional associations suggested in §317.M.1. Please be prepared to provide the dates and nature of content or consultation covered;

8. formal study groups of three or more participants. Must submit name, address, telephone number and credentials of group members to the board office. Study groups should maintain records of topics, attendance, meeting times, and presenters for audit purposes;

9. contracted professional consultation which the credentialed social worker receives. Must provide the paid consultant's name, address, telephone number, credentials, and the dates and focus of the consultation;

10. preparation of substantial written material with content applicable to social work practice which requires literature search, research, and explication of social work content (such as writing a social work article or book for publication, or a major grant application). Please provide specific information about the nature of the written work, the effort required, and the publisher or funding agency. These activities may be counted for no more than five hours continuing education;

11. social workers should be doing consistent independent study. However, such study does not meet the goal of increasing professional relationships and networks. Consequently independent study must receive pre-approval from the board.

N. - O.4....

5. A continuing education offering that rates a zero in any category of the Guide for Assessment of Continuing Education.

P. Guide for Assessment of Continuing Education. As continuing education events vary across the categories listed below, the appropriateness of considering them as acceptable continuing education also varies. An event must receive a total score (combination of all three sections) of 10 to be "clearly acceptable" for continuing education to renew a social work credential. If a category (Program Content, Program Presenter or Program Audience) rates a zero, the education offering is not acceptable for social work continuing education.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.(C) and (G) and 37:2714.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:305 (February 2000), amended LR 29:2385 (November 2003), LR 33:

§319. Reciprocity and Endorsement

A. - C.2.

3. The applicant has passed the advanced generalist, clinical, or masters examination of the Association of Social Work Boards, or equivalent examination, in order to secure current social work license or certification in the state of Louisiana. The applicant shall request that the ASWB forward the official score report to the Louisiana board.

4. The jurisdiction from which the application for a license or certificate comes, accords similar privilege for licensure or certification without examination to holders of licenses or certificates.

5. The applicant submits the required fees.

6. The applicant submits the completed application for endorsement.

7. The verification of license in other state form is completed by any jurisdiction in which the applicant has or has held a social work credential and submitted to the Louisiana board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:306 (February 2000), amended LR 33:

Chapter 5. Minimum Supervision Requirements §503. GSWs Seeking the LCSW Credential

Editor's Note: Section 503 has been re-formatted and much of the content has remained the same.

A. Supervision for the LCSW license can begin after the MSW obtains Graduate Social Work certification.

B. GSWs seeking the LCSW credential must receive a minimum of 24 accumulated calendar months of supervised full-time postgraduate social work practice under the supervision of a Board Approved Clinical Supervisor (BACS).

C. MSW applicants who began their supervised experience on or before December 31, 1999 and filed a Contract for Supervision at the board office postmarked on or before December 31, 1999, shall be required to submit only 24 accumulated months of supervised post graduate social work experience in accordance with the boards supervision rules and on the forms provided by the board to qualify for the LCSW examination and license.

D. A calendar month is counted from the first working day of the month to the last day of that month. GSWs may obtain a list of Board Approved Clinical Supervisors (BACS) from the board office.

E. Face-to-face supervision for licensure must total at least 96 hours.

F. Supervision segments of no fewer than 30 minutes will be counted toward meeting the supervision requirement. Face-to-face supervision must occur for at least 50 minutes to constitute as a hour of supervision.

G. The requirement for supervision is at least 4 hours per calendar month with at least two different supervision contacts per month.

H. One-half (48 hours maximum) of the supervision requirement may be met through group supervision, occurring in increments of no more than two hours per group. No more than five supervisees may be involved in supervision groups.

I. The supervisee and supervisor must keep accurate records of both the dates of supervision times and the hours spent in supervision for potential audit of records. This information must be submitted to the board office on the supervision form entitled Record of Supervision.

J. Supervised work experience eligible to be counted towards licensure begins on the first working day of the first full calendar month after the first supervisory session.

K. School social workers may only count supervision that occurs during the full months in which they are employed in a social work position.

L. The original Plan of Supervision must be submitted to the board office within 60 days of the first supervision session. A Plan of Supervision shall be submitted on each supervision experience.

M. The individual completing supervision toward the LCSW supervised experience requirement must use the

following forms to submit their supervision to the board office:

1. Registration of Supervision;
2. Employer Verification Affidavit;
3. Supervision Agreement/Plan of Supervision;
4. Record of Supervision;
5. Evaluation of Supervision;
6. Termination of Supervision;
7. Professional Experience Verification Affidavit.

N. Forms must be legible. Preferably, material on forms should be typed, but if not typed, the forms must be printed neatly and legibly. Forms which are not legible will be returned.

O. Only original, unaltered supervision forms may be submitted to the board office. Copies, faxes, or forms with any alterations (such as white-out or mark-outs) will not be accepted.

P. To register his/her intent to initiate supervision, the GSW must submit the completed Registration of Supervision, with the registration fee of \$35.

Q. The Plan of Supervision will be reviewed and revisions may be required. Revisions shall be submitted to the board office within 30 days of receipt by the supervisee/supervisor.

R. The supervisee shall submit an Employer Verification Affidavit form from each place of social work employment after she/he receives the MSW degree. The form shall be completed by the employer, not the supervisor (unless the employer and the supervisor are one and the same.)

S. Termination and Evaluation forms shall be submitted to the board office at the end of the supervisory period, and must clearly designate the beginning and ending dates of supervision.

T. Sometimes it is necessary for a supervisor to discontinue supervising a GSW for licensure. When this occurs, no matter what length of time the supervisor actually supervised the supervisee, the supervisor must submit an Evaluation and Termination form.

U. The Professional Experience Verification Affidavit shall be submitted to the board office at the end of the 36 accumulated months of work experience from each place of employment.

V. The supervisor has a professional responsibility to honor his/her commitment to supervise responsibly, which includes submitting forms on a timely basis. Should the supervisor fail to submit forms appropriately, legibly, and on a timely basis, the board reserves the right to withdraw the Board Approved Clinical Supervisor (BACS) designation from the supervisor.

W. When supervision is provided to a GSW by a LCSW-BACS supervisor, not an agency employee, social work ethics require that the LCSW-BACS take responsibility for securing agency agreement to the Plan of Supervision, whether the fee for supervision is paid by the agency or the supervisee.

1. The LCSW-BACS is responsible for clarifying with the agency administration the supervisory role responsibilities and the content of supervision.

2. Under such a plan the supervisees written evaluation is made available to the agency if the agency is paying for the supervision. If the supervisee is paying the fee for supervision, the evaluation is the supervisees property.

X. If the GSW receives supervision outside of the state of Louisiana, that supervision will be accepted if:

1. the supervisor has completed the authorized supervision forms of the Louisiana State Board of Social Work Examiners; and

2. the supervisor was licensed at the time of supervision in the other state and submits the License Verification of Out-of-State Supervisor form (available from board office); or

3. the supervisor was certified by the Academy of Certified Social Workers (ACSW) at the time of supervision, which the supervisor must verify.

Y. A supervisory record shall include:

1. plan of supervision,

2. learning assessment of supervisee,

3. record of all supervisory sessions, and any canceled or missed appointments,

4. overview of cases discussed, as well as significant decisions made,

5. any ethical concerns,

6. significant problems arising in supervision, and how they were resolved,

7. memos and correspondence,

8. or all above data, dates completed and person completing the item.

Z. The boards' publication, *Supervision for Professional Development and Public Protection: A Guide*, provides more information relative to supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:307 (February 2000), amended LR 29:2387 (November 2003), LR 33:

§505. The GSW Not Receiving BACS Supervision or the Provisional GSW Not Eligible for BACS Supervision

A. The GSW who is not receiving BACS supervision or the Provisional GSW not eligible for BACS supervision, may deliver those clinical services which constitute psychotherapy only under the supervision of a LCSW. Supervision under these circumstances does not require that the supervising LCSW have the Board Approved Clinical Supervisor (BACS) designation.

B. Regardless of the time spent in clinical practice, the GSW or Provisional GSW must be supervised in accordance with the following rules.

C. The employing agency ultimately is responsible and accountable for services rendered by the GSW or Provisional GSW; therefore, the agency may provide access to LCSW supervision to ensure quality of services. The GSW or Provisional GSW may independently secure LCSW supervision.

D. - E. ...

F. Supervision for GSWs or Provisional GSW rendering clinical services constituting psychotherapy shall total a minimum of two hours per month, counted in increments of no fewer than 30 minutes, for the duration of the time that the GSW or Provisional GSW is rendering psychotherapeutic services.

G. ...
AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:307 (February 2000), LR 33:

§507. Board-Approved Clinical Supervisor

A. - A.3. ...

4. complete a board orientation workshop;

5. complete a board approved supervision workshop on the theory and techniques of supervision as well as procedures used in supervision toward licensure ;

A.6. - B.2 ...

3. Complete three clock hours of continuing education in clinical supervision every two years beginning July 1, 2008. These hours must be pre-approved by a LABSWE-designated approval organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:308 (February 2000), amended LR 29:2388 (November 2003), LR 33:

Chapter 7. Impaired Professional Program Authority
§701. Authority

A. - B. ...

C. Therefore, in order to ensure a quality program with professional oversight, the Louisiana State Board of Social Work Examiners establishes the Impaired Professional Program Committee. The committee structure and function is directed by the Board's Chairperson.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2389 (November 2003), amended LR 33:

§703. Purpose and Scope

A. ...

B. A social worker who meets the requirements of R.S. 37:2706, 2707 or 2708 may enter the program subsequent to voluntary disclosure of impairment via an initial or renewal application for a credential. Entrance into the program may also occur by determination of the board, following involuntary disclosure of impairment in accordance with R.S. 37:2717(A)(2) or R.S. 37:2717(B)(4), or by other circumstances deemed appropriate by the board. Participation in the program may hence be required as a prerequisite to continued social work practice in accordance with the conditions of any consent order, compliance or adjudication hearing. A social worker who enters the program may be allowed to maintain his/her social work credential while in compliance with the requirements of their program.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2389 (November 2003), amended LR 33:

§705. Program Implementation

A. ...

1. The program participant is required to submit to an assessment relative to the impairment;

a. - b.iv. ...

c. The assessment will be forwarded to the board or its designee by the professional completing the assessment, to be received no later than 30 days following the board's determination of the participant's potential eligibility or requirement to participate in the program.

2. ...

a. The beginning date of the monitoring period will be the date upon which a consent order or participation agreement is formally signed by the social worker and the board, or the date of the board's official decision to require program participation in the event of an adjudication hearing.

3. ...

a. The interval, timing and details of the required screening will be directed by the IPP Manager.

b. Results and reports of all screens will be submitted to the board or its designee before the final business day of the month following the date of the screen.

4. Receipt of any positive, unexplained substance abuse/drug screen or reports of non-compliance or complications relative to the impairment during the monitoring period may result in suspension, or other appropriate action pertaining to the social worker's credential, or exclusion from the IPP, as determined appropriate by the board.

5. When the impairment is substance related, the social worker may be required to attend Twelve Step, or other appropriate support group, meetings on a regular basis.

a. A pre-approved monthly log must be submitted to and received by the board or its designee before the final business day of the month following completion of the required meetings. It is the social worker's responsibility to ensure that these logs are properly completed and received by the board by the designated date.

b. - c. Repealed.

6. - 10. ...

a. - c. Repealed.

11. - 12. ...

13. The social worker must submit to the board an appropriately notarized participation agreement indicating acceptance of the required conditions of participation in the *Social Work Impaired Professional Program* as mandated by the board, along with all initial (or updated) releases or authorizations for the board or its designees to obtain information concerning the social worker's participation and progress in the program. This statement and the required releases and authorizations must be submitted prior to the issuance of any initial credential or re-issuance of a renewal of a credential.

14. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2389 (November 2003), amended LR 33:

Interested parties may review the proposed amendments on the board's web site located at: <http://www.labswe.org>., and send all written comments to 18550 Highland Road, Suite B., Baton Rouge, LA 70809.

Richard N. Burt
Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Social Work**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is anticipated that \$7,500 (\$3000 in FY07 and \$4,500 in FY08) in printing costs will be incurred with the publication of the proposed rule changes. The Board has sufficient self-generated funds available to implement the proposed rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is estimated that revenue for the Board will not be impacted. No other state or local Governmental unit will be affected.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed rules revisions are a result of the emergency preparedness provisions as mandated by ACT 207 of the 2006 Regular Session of the Louisiana Legislature, which provides for temporary registration of out-of-state healthcare professionals during a state-declared public health emergency. These rule changes are also being promulgated in accordance with the recommendations of the Board of Social Work Examiners to ensure public protection through the provision of appropriate supervision requirements; clarification of continuing education requirements; and appropriate social work relationships.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition and employment.

Richard N. Burt
Administrator
0706#038

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Early and Periodic Screening, Diagnosis and Treatment
Personal Care Services
Personal Care Workers Wage Enhancement
(LAC 50:XV.7321)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:9530 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for personal care services in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program (*Louisiana Register*, Volume 28, Number 2). The bureau promulgated an Emergency Rule to amend the provisions of the February 20, 2003 Rule governing the reimbursement methodology for personal care services in the EPSDT Program to implement an hourly wage pass-through, hereafter referred

to as a wage enhancement, payment to providers for personal care workers (*Louisiana Register*, Volume 33, Number 2). This proposed Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 73. Personal Care Services

§7321. Reimbursement

A. ...

B. Personal Care Workers Wage Enhancement.

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage enhancement shall be paid to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage enhancement.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

a. gross wage paid to the direct support professional(s);

b. total number of direct support hours worked; and

c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

6. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

7. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to personal care workers may result in:

a. forfeiture of eligibility for wage enhancement payments;

b. recoupment of previous wage enhancement payments;

c. Medicaid fraud charges; and

d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed

Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, July 26, 2006 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Early and Periodic Screening, Diagnosis
and Treatment—Personal Care Services
Personal Care Workers Wage Enhancement**

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$179,222 for FY 06-07, \$515,632 for FY 07-08, and \$531,101 for FY 08-09. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$412,440 for FY 06-07, \$1,311,553 for FY 07-08, and \$1,350,900 for FY 08-09. It is anticipated that \$170 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This rule, which continues the provisions of the February 9, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for personal care services in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program to implement an hourly wage enhancement payment, hereafter referred to as a wage enhancement, to providers for personal care workers (approximately 3,550,00 annual units of service). It is anticipated that implementation of this proposed rule will increase program expenditures in the EPSDT program by approximately \$591,322 for FY 06-07, \$1,827,185 for FY 07-08 and \$1,882,001 for FY 08-09.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by

assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips
Medicaid Director
0706#065

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Intermediate Care Facilities for the Mentally Retarded
Direct Service Professionals—Wage Enhancement
(LAC 50:VII.32903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:VII.32903 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded (ICFs/MR) that included the Inventory for Client and Agency Planning (ICAP) instruments (*Louisiana Register*, Volume 31, Number 9).

The bureau promulgated an Emergency Rule to amend the provisions of the September 20, 2005 Rule governing the reimbursement methodology for ICFs/MR by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the facility (*Louisiana Register*, Volume 33, Number 2). It is the intent that this wage enhancement be paid to the direct care staff. This proposed Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule.

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

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities for the Mentally
Retarded
Chapter 329. Reimbursement
Subchapter A. Reimbursement Methodology
§32903. Rate Determination**

A. - D.1.d. ...

* * *

e. Direct Service Provider Wage Enhancement. For dates of service on or after February 9, 2007, the direct care reimbursement in the amount of \$2 per hour to ICF-MR providers shall include a direct care service worker wage enhancement incentive. It is the intent that this wage enhancement be paid to the direct care staff. Non compliance with the wage enhancement shall be subject to recoupment.

i. At least 75 percent of the wage enhancement shall be paid to the direct support professional and 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

ii. The wage enhancement will be added on to the current ICAP rate methodology as follows:

(a). per diem rates for recipients residing in 1-8 bed facilities will increase \$16;

(b). per diem rates for recipients residing in 9-16 bed facilities will increase \$14.93; and

(c). per diem rates for recipients residing in 16+ bed facilities will increase \$8.

D.2. - H.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2253 (September 2005), amended LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, July 26, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Intermediate Care Facilities for the Mentally Retarded—Direct Service Professionals Wage Enhancement**

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$1,988,352 for FY 06-07, \$5,558,864 for FY 07-08, and \$5,558,864 for FY 08-09. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$4,578,024 for FY 06-07, \$14,139,448 for FY 07-08, and \$14,139,448 for FY 08-09. It is anticipated that \$136 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This rule, which continues the provisions of the February 9, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the facility. It is the intent that this wage enhancement be paid to the direct care staff. It is anticipated that implementation of this proposed rule will increase program expenditures for ICFs/MR services by approximately \$6,566,104 for FY 06-07, \$19,698,312 for FY 07-08 and 19,698,312 for FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips
Medicaid Director
0706#066

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Nursing Facilities
Direct Support Professionals—Wage Enhancement
(LAC 50:VII.1305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:VII.1305 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to establish a prospective payment system for nursing facilities based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology (*Louisiana Register*, Volume 28, Number 8). The August 20, 2002 Rule was subsequently amended to adopt provisions governing a quarterly adjustment of individual nursing facility rates based on overall case mix and to allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities (*Louisiana Register*, Volume 32, Number 12). The bureau promulgated an Emergency Rule to amend the provisions of the December 20, 2006 Rule governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility (*Louisiana Register*, Volume 33, Number 2). It is the

intent that this wage enhancement be paid to the direct care staff. This proposed Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule.

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

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - D.1.h.Example ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care rate will be increased by a \$4.70 wage enhancement prior to the case-mix adjustment for direct care staff. The \$4.70 wage enhancement will be included in the direct care component of the floor calculations. It is the intent that this wage enhancement be paid to the direct care staff.

D.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, July 26, 2007 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Facilities

Direct Support Professionals—Wage Enhancement

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$3,475,322 for FY 06-07, \$10,007,778 for FY 07-08, and \$10,308,011 for FY 08-09. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$8,001,786 for FY 06-07, \$25,455,645 for FY 07-08, and \$26,219,315 for FY 08-09. It is anticipated that \$136 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This rule, which continues the provisions of the February 9, 2007 Emergency Rule, proposes to amend the provisions governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility (approximately 610,000 units of service per month). It is the intent that this wage enhancement be paid to the direct care staff. It is anticipated that implementation of this proposed rule will increase program expenditures for nursing facility services by approximately \$11,476,836 for FY 06-07, \$35,463,423 for FY 07-08 and \$36,527,326 for FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have a positive effect on competition and employment by assisting providers to recruit and retain sufficient direct care staff.

Jerry Phillips
Medicaid Director
0706#067

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Citizens Property Insurance Corporation

Regulation 87—Louisiana Citizens Property Insurance Corporation—Producer Binding Requirements (LAC 37:XIII.Chapter 121)

The Louisiana Citizens Property Insurance Corporation, through its Board of Directors, and pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., inter alia, R.S. 22:1430.22, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives Notice of Intent to promulgate Regulation 87 titled Producer Binding Requirements for property and casualty insurance issued by the Louisiana Citizens Property Insurance Corporation through the Louisiana Joint Reinsurance Plan (FAIR Plan) and the Louisiana Insurance Underwriting Plan (Coastal Plan).

As a result of the devastation and destruction caused by Hurricane Katrina and Hurricane Rita, many Louisiana citizens have lost or could lose homeowners insurance coverage or other property and casualty insurance coverage in areas that were most affected by the impact of these two hurricanes. Many citizens have sought or may be forced to seek coverage through other insurance companies to address their property and casualty insurance needs.

Recognizing the gravity of the impact left by Hurricane Katrina and Hurricane Rita and the immediate needs of Louisiana citizens to have property and casualty insurance coverage, the Louisiana Legislature in the 2006 Regular Session enacted Act No. 787, which provides authority for

producers to bind coverage with the Louisiana Citizens Property Insurance Corporation. Regulation 87 is promulgated to accomplish the purposes required by Acts 2006, No. 787. Through the implementation of Regulation 87, qualified producers will be able to write applications of property and casualty insurance through the FAIR Plan and the Coastal Plan after satisfying certain binding authority requirements. As we enter the 2007 hurricane season, Regulation 87 establishes standards and procedures for these producers to utilize in the application process in order that these producers may provide Louisiana citizens with the property and casualty insurance coverage they need in order to avoid the peril that would result from a property loss due to a hurricane or other natural disaster.

Title 37

INSURANCE

PART XIII. Regulations

Chapter 121. Regulation 87—Louisiana Citizens Property Insurance Corporation Producer Binding Requirements

§12101. Purpose

A. The purpose of Regulation 87 is to establish standards, guidelines, and requirements for licensed and qualified insurance producers to have binding authority to write applications of property and casualty insurance for the FAIR Plan and the Coastal Plan issued by the Louisiana Citizens Property Insurance Corporation. Regulation 87 also sets forth standards and procedures regarding the application process for use by such insurance producers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12103. Authority

A. Regulation 87 is promulgated by the Board of Directors of the Louisiana Citizens Property Insurance Corporation, pursuant to the authority granted under the Louisiana Insurance Code, Title 22, R.S. 22:1430.22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12105. Applicability and Scope

A. Regulation 87 applies to all insurance producers who are duly licensed by the Louisiana Department of Insurance to sell property and casualty insurance, are engaged in and transact the business of insurance in the state of Louisiana, have applied to the Louisiana Citizens Property Insurance Corporation and have met the qualifications for binding authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12107. Definitions

A. For the purposes of Regulation 87, the following terms shall have the meaning or definition as indicated herein.

Binding Authority—the ability of a duly licensed insurance producer, who has adequate errors and omission insurance, and has completed a training course offered by

citizens, to issue a policy of property and casualty insurance in the FAIR Plan and Coastal Plan that imposes liability upon citizens. A licensed producer must meet all requirements for binding authority set forth in Regulation 87 and must have applied to and have been authorized by citizens to qualify for binding authority.

Citizens—the Louisiana Citizens Property Insurance Corporation, and includes the residual market insurance programs known as the "Coastal Plan" and the "FAIR Plan."

Coastal Plan—the successor to that program established by Act 35 of the 1970 Regular Session to provide a residual market for adequate insurance on property in the coastal areas of the state, now available as a program of citizens.

Commissioner—the Commissioner of Insurance of the Louisiana Department of Insurance.

Department—the Louisiana Department of Insurance.

FAIR Plan—the successor to that program established by Act 424 of the 1992 Regular Session, and designated as the "Fair Access to Insurance Requirements Plan" to provide a residual market for adequate insurance on property in the state, now available as a program of citizens.

Insurance Producer—a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, and includes all persons or business entities otherwise referred to in the Louisiana Insurance Code as "insurance agent" or "agent," or "insurance broker" or "broker," or "insurance solicitor" or "solicitor," or "surplus lines broker."

Louisiana Policy Management System (LPMS)—the citizens policy management computer system or its successor.

Procedural Error—an error in an insurance application to bind property and casualty coverage with citizens that does not materially affect the underwriting risk or rise to the level of a material misrepresentation that does not rise to the level of a substantive error.

Producer Subscriber Agreement—a contractual agreement delineating the terms, provisions and conditions permitting insurance producers and/or producer agencies to bind coverage and write property and casualty insurance issued by citizens through the FAIR Plan and the Coastal Plan.

Substantive Error—an error in an application to bind property and casualty insurance coverage with citizens that materially affects the underwriting risk or rises to the level of a material misrepresentation.

Unlicensed Employee—a person hired by an insurance producer who performs administrative or clerical duties authorized by such insurance producer relative to an insurance application, but does not possess an insurance producer license and is not authorized to sell, solicit, or negotiate a contract of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12109. Licensing

A. Pursuant to R.S. 22:3, no person shall be authorized to transact or shall transact the business of insurance in the state of Louisiana without complying with the provisions of the Louisiana Insurance Code.

B. Except as otherwise provided in R.S. 22:1134(B) and 22:1148(C)(1), no person shall act as or hold himself out to be an insurance producer unless licensed by the department as required by R.S. 22:1133.

C. In accordance with R.S. 22:1133(B), an insurance producer is not authorized to sell, solicit, make an application for, procure, or place for others any policies for any lines of insurance as to which the insurance producer is not qualified and duly licensed in the state of Louisiana.

D. Citizens acknowledges that the granting of an insurance producer license is within the sole province of the department and nothing in Regulation 87 shall be construed or intended to confer upon citizens any right to the licensure of any insurance producer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12111. Qualifications for Binding Authority

A. In order to bind coverage for the FAIR Plan and the Coastal Plan through citizens, each duly licensed insurance producer must meet the following requirements:

1. maintain errors and omission insurance in the minimum amount of \$1 million per occurrence and \$1 million annual aggregate;

2. complete the initial training course and the annual training course approved and offered by citizens, except that an insurance producer authorized by and conducting business with citizens on the date Regulation 87 becomes final shall have until December 31, 2008 to complete the educational requirements;

3. demonstrate experience writing property and casualty insurance in Louisiana and maintain an in-force book of residential and/or commercial property insurance business in the lines of insurance offered by citizens;

4. have a valid insurance producer license issued by the department;

5. submit to citizens a completed application warranting compliance with applicable requirements established by citizens;

6. submit to citizens a properly executed producer subscriber agreement; and

7. demonstrate compliance with all terms and conditions set forth in the producer subscriber agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12113. Procedures to Implement Binding Authority

A. The insurance producer shall list all unlicensed employees that shall have access to the Louisiana Policy Management System (LPMS) in order for the insurance producer to bind property and casualty insurance coverage for their clients with citizens.

B. If the insurance producer is an insurance agency, it shall list each unlicensed employee or insurance producer that shall have access to the Louisiana Policy Management System (LPMS) in order for the insurance producer to bind property and casualty insurance coverage for their clients with citizens.

C. Each insurance producer, whether an individual or an agency, shall assign an administrator who shall have the responsibility and authority to add and/or delete unlicensed employees, including insurance producers, who have been authorized to access the LPMS. The administrator shall provide each unlicensed employee, including insurance producers, an LPMS access code, and the administrator and insurance producer shall select a secure password to access the LPMS. The administrator shall be responsible for managing the LPMS Interface with the insurance producer, whether an individual or an agency, and maintaining up-to-date information in the LPMS.

D. Citizens will publish and maintain technical computer system requirements for the LPMS. Instructions for using the LPMS will be available on a web site created and maintained by citizens. Insurance producers are responsible for ensuring that their computer systems and internal resources meet the technical computer system requirements and that their unlicensed employees, including insurance producers if an insurance agency, are properly trained on the use of the LPMS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12115. Procedures for Application to Bind Coverage

A. The insurance producer shall complete and submit the on-line application for property and casualty insurance coverage to citizens and shall comply with all requirements of the application process that have been established by citizens.

B. The insurance producer authorized to bind coverage with citizens on the LPMS shall provide a valid Louisiana property and casualty insurance producer license number issued by the department in each application for property and casualty coverage with citizens utilizing the LPMS. The administrator shall be responsible for maintaining an up-to-date list of insurance producers with the current insurance producer license number issued by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12117. Education and Training

A. Each authorized insurance producer and each authorized employee of an insurance producer shall, within each calendar year, attend at least one certified continuing education seminar that has been previously approved by citizens in order to maintain their binding authority. Continuing education seminars will be provided by citizens at least twice during each calendar year in order to facilitate the fulfillment of this requirement.

B. Each new insurance producer and each employee of a new insurance producer shall attend a previously approved citizens education seminar as a prerequisite for authorization to bind coverage.

C. Any insurance producer who is authorized by and conducting business with citizens on the date Regulation 87 becomes final shall have until December 31, 2008 to complete the educational requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12119. Errors and Omission Insurance

A. Each insurance producer, including the insurance agency if applicable, must provide documentary proof to citizens that it has met and is carrying a required minimum of \$1 million per occurrence and \$1 million annual aggregate of professional liability coverage at the time of application for binding authority. Proof of professional liability coverage shall include, at a minimum, documentation that verifies the liability insurer, the amount of coverage and the duration of coverage. The administrator of the insurance producer shall update this proof of professional liability coverage in the LPMS each year in advance of the expiration date of the coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12121. Underwriting Requirements

A. Each insurance producer, including a producer who is an insurance agency, who has authority to bind coverage with citizens is responsible to ensure that each producer and unlicensed employee properly follows all of the underwriting procedures established by citizens. Any insurance producer who attempts to bind coverage with citizens and fails to follow the underwriting procedures that have been established by citizens shall be subject to the action that citizens is authorized to take, including the suspension and termination of binding authority privileges, as prescribed in Section 12125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12123. Premium Payments Requirements

A. An insurance producer shall submit the entirety of the premium payment with the application within five calendar days after receipt of the premium. In order to expedite the payment of the premium, any premium money collected from a policyholder by the insurance producer may be electronically drafted from the insurance producer's trust account. The insurance producer shall complete and submit to citizens the necessary draft forms, including the trust account information, in order to utilize this electronic process. Use of this electronic process is not required. However, each insurance producer is encouraged to utilize the electronic process as a preferred method to guarantee that payment of the premium is remitted timely to citizens.

B. Failure to timely submit a premium to citizens may result in suspension of binding authority privileges for one year unless reinstated before the expiration of the one year period by citizens. Additionally, the insurance producer will be referred to the department for further action authorized under the Louisiana Insurance Code. An insurance producer who has been suspended may be authorized to service existing Citizen's business. However, such insurance producer will not be authorized or entitled to bind any new business unless and until reinstated by citizens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12125. Suspension and Termination of Binding

Authority

A. Citizens has the authority to suspend or terminate the binding authority privileges of an insurance producer if citizens determines that the insurance producer has failed to adhere to proper underwriting and binding procedures that have been established by citizens.

B. An insurance producer who demonstrates a consistent practice of submitting multiple procedural errors on applications to bind coverage with citizens may have his binding authority privileges suspended for a period of not more than 12 months and until such time as citizens has determined that the subject insurance producer has taken the actions required by citizens to rectify the procedural errors.

C. An insurance producer who, during a 12 month period, commits a substantive error in five or more applications to bind coverage with citizens may have his binding authority privileges suspended for a period of not more than 12 months and until such time as citizens has determined that the subject insurance producer has taken the actions required by citizens to rectify the substantive errors.

D. An unlicensed employee who demonstrates a consistent pattern of submitting procedural errors or substantive errors on applications to bind coverage with citizens may be denied the right to access the LPMS on behalf of the insurance producer until such time as citizens has determined that the subject unlicensed employee has taken the actions required by citizens to rectify the errors. The insurance producer, and if applicable an insurance agency, who is responsible for the unlicensed employee who has been sanctioned herein shall be subject to suspension or termination of the binding authority privileges as deemed appropriate by citizens pursuant to the guidelines set forth in Subsections B, C, E and F.

E. An insurance agency, whose producers and/or unlicensed employees, demonstrate a consistent practice of submitting applications to bind coverage with citizens that contain substantive errors that materially affect the underwriting risk of any contract of property and casualty insurance issued, or to be issued, by citizens may have all binding authority privileges terminated for a period of not more than 12 months and until such time as citizens has determined that the subject insurance producer has taken the actions required by citizens to rectify the substantive errors. After the expiration of the termination period, the insurance producer may apply for reinstatement. Reinstatement shall be at the sole discretion of citizens and may be subject to any additional training or educational requirements imposed by citizens.

F. An insurance producer who has been determined by citizens to have knowingly or intentionally engaged in fraudulent conduct or committed an act of fraud in or relative to an application to bind coverage with citizens shall have all binding authority privileges terminated and shall not be eligible for reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12127. Appeals

A. An insurance producer aggrieved by any action taken by the chief executive officer of citizens relative to the suspension or termination of their binding authority privileges shall have the right to file a written appeal to the Board of Directors of citizens. The written appeal shall be filed within 30 days of the date of the adverse action taken by the chief executive officer of citizens against the aggrieved party. The written appeal shall set forth, in detail, each and every reason why the aggrieved party is entitled to the relief requested, including any documents, papers and things tendered in support thereof. The Board of Directors of citizens may conduct a hearing or may consider the matter as being submitted on the merits. The Board of Directors of citizens shall render a decision within 90 days after the date of the lodging of a timely and complete appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12129. Referral for Regulatory Action

A. Citizens reserves the right to refer any matter involving Regulation 87 to the department for any legal action authorized under the Louisiana Insurance Code, including, but not limited to, fine, probation, suspension or revocation of the insurance producer license issued by the department to the insurance producer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12131. Severability

A. If any provision of Regulation 87 or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of Regulation 87 which can be given effect without the invalid provision or application, and to that end, the provisions of Regulation 87 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

§12133. Effective Date

A. Regulation 87 shall become effective on the date of the publication of the final rule in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:

Family Impact Statement

The proposed Regulation 87 LAC 37:XIII., Chapter 121 titled Louisiana Citizens Property Insurance Corporation Producer Binding Requirements should not have any known or foreseeable impact on any family as defined by R.S.

49:972D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed regulation.

A public hearing on this proposed regulation will be held on July 30 2007, at 10 a.m., in the Poydras Hearing Room of the Poydras Building, 1702 North Third Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Mr. J. William Newton, Chairman, Board of Directors, Louisiana Citizens Property Insurance Corporation, c/o Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business, 4:30 p.m., July 30, 2007. No preamble concerning the proposed regulation is available.

J. William Newton
Chairman

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

**RULE TITLE: Regulation 87—Louisiana Citizens
Property Insurance Corporation
Producer Binding Requirements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
Louisiana Citizens Property Insurance Corporation does not anticipate any implementation costs for proposed Regulation 87.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no increase or decrease in revenue as a result of the proposed Regulation 87.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Persons applying for coverage through Louisiana Citizens Property Insurance Corporation would be impacted in that their insurance producer would be able to bind coverage when taking their application, assuring that the property is covered by insurance.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Implementation of proposed Regulation 87 should have no impact upon competition and employment in the state.

J. William Newton
Chairman
0706#071

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Progressive Electronic Gaming Devices
(LAC 42:VII.4204, IX.4204, and XIII.4204)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:VII.4204, IX.4204, and XIII.4204 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

**Part VII. Pari-Mutuel Live Racing Facility
Slot Machine Gaming**

Chapter 42. Racetracks: Electronic Gaming Devices

§4204. Progressive Electronic Gaming Devices

A. - F.1. ...

G. Consistent Odds on Linked EGD's

1. When two or more progressive gaming devices are linked together, each device on the link shall have the same probability of winning any particular progressive award offered, and the probability shall be in proportion to the amount wagered. The method of equalizing the expected probability of winning any progressive award shall be conspicuously displayed on each device connected to the system.

H. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:775 (April 2000), amended LR 31:1604 (July 2005), LR 33:

Part IX. Landbased Casino Gaming

**Subpart 1. Economic Development and
Gaming Corporation**

Chapter 42. Electronic Gaming Devices

§4204. Progressive Electronic Gaming Devices

A. - F.1. ...

G. Consistent Odds on Linked EGD's

1. When two or more progressive gaming devices are linked together, each device on the link shall have the same probability of winning any particular progressive award offered, and the probability shall be in proportion to the amount wagered. The method of equalizing the expected probability of winning any progressive award shall be conspicuously displayed on each device connected to the system.

H. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and R.S. 27:24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:2311 (October 2000), amended LR 31:1605 (July 2005), LR 33:

Part XIII. Riverboat Gaming

Subpart 2. State Police Riverboat Gaming Division

Chapter 42. Electronic Gaming Devices

§4204. Progressive Electronic Gaming Devices

A. - F.1. ...

G. Consistent Odds on Linked EGD's

1. When two or more progressive gaming devices are linked together, each device on the link shall have the same probability of winning any particular progressive award offered, and the probability shall be in proportion to the amount wagered. The method of equalizing the expected probability of winning any progressive award shall be conspicuously displayed on each device connected to the system.

H. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:718 (April 2000), amended LR 31:1607 (July 2005), LR 33:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953(A), the Louisiana Gaming Control Board through its chairman, has considered the potential family impact of amending LAC 42:VII.4204, IX.4204, and XIII.4204.

It is accordingly concluded that amending LAC 42:VII.4204, IX.4204, and XIII.4204 would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to this proposed Rule through July 10, 2007, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

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

RULE TITLE: Progressive Electronic Gaming Devices

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
No implementation costs are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that there will be a positive, although probably marginal, impact on revenue collections due to expected increased play of newer slot machines; however, the amount of any increase cannot be estimated with any degree of certainty.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No increased costs are anticipated to be borne by directly affected persons (casino gaming industry). It is anticipated that there will be a positive, although probably marginal, impact on gaming revenue due to expected increased play of newer slot machines; however, the amount of any increase cannot be estimated with any degree of certainty.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

No effect on competition or employment is estimated.

H. Charles Gaudin
Chairman
0706#032

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

State Uniform Construction Code (LAC 55:VI.301)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council hereby proposes to amend a Section under Chapter 3 to include the mechanical and electrical chapters into the International Residential Code as part of the Louisiana State Uniform Construction Code.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

A. - A.2. ...

3. International Residential Code, 2006 Edition, not including Parts I-Administrative and VII-Plumbing. The applicable standards referenced in that Code are included for regulation of construction within this state. Appendix J, Existing Buildings and Structures, is also included for mandatory regulation. For purposes of this Part, Section R301.2.1.1 of the 2003 edition of the International Residential Code is hereby specifically adopted in lieu of the 2006 edition and shall be effective until January 1, 2008. Furthermore, IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall only apply to the International Residential Code:

- a. amendment of R301.2.1.1 (Design Criteria);
- b. item 6, the American Concrete Institute, Guide to Concrete Masonry Residential Construction in High Winds Areas, shall be added;
- c. item 7, Institute for Business and Home Safety, Optional Code-plus Fortified for Safer Living, shall be added;
- d. item 8, Federal Alliance for Safe Homes, Optional Code-plus Blueprint for Safety, shall be added.

4. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 33:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Paeton Burkett, Attorney, Louisiana State Uniform Construction Code Council, at 7979 Independence Boulevard, Suite 307Q, Baton Rouge, LA 70806. Comments will be accepted through close of business July 10, 2007.

Jill Boudreaux
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: State Uniform Construction Code**

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

This rule will not result in an increase in costs or savings to local governmental units since the rule only included two additional chapters (mechanical and electrical chapters) into the International Residential Code, which was previously adopted as part of the Louisiana State Uniform Construction Code. The proposed rule does not add any additional expenditures apart from or in addition to those that will result from the enactment of Act 12 of the 2005 First Extraordinary Session. Pursuant to that Act, the Department of Public Safety and Corrections has employed four (4) additional positions needed as staff for the Uniform Construction Code Council. The annual cost of these positions and associated expenses are estimated to be \$322,478 in FY 08, \$331,361 in FY 09, and \$340,601 in FY 10.

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

The proposed rule will have no effect on revenue collections of state governmental units.

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

No commercial or residential building may be constructed, altered or repaired until plans have been reviewed and the structure inspected for compliance with the Louisiana Uniform Construction Code. This rule is being adopted to provide mechanical and electrical standards for residential structures, which is current practice in many jurisdictions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There will be no effect on competition and employment as the proposed rule is merely adding two chapters to an already established code.

Jill P. Boudreaux
Undersecretary
0706#034

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Returns and Payment of Tax; Penalty for Absorption of Tax
(LAC 61:I.4351)

Under the authority of R.S. 47:306, 47:337.2, 47:337.18, and 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4351 to provide guidance to taxpayers concerning the filing of sales tax returns.

The department has traditionally approved applications of dealers to combine the sales tax filing data from several locations of the same legal entity into a single monthly or quarterly sales tax return, and will continue to do so. The proposed Rule provides, however, that when a dealer operates a location within the boundaries of a tax increment financing district, the department might require that the sales tax data for the location within the district be reported on a separate return. The department might require a dealer to file a separate return in any other instance where tax data is required for an individual sales location.

The proposed Rule also provides with respect to the filing of quarterly sales tax returns with the Louisiana Department of Revenue and for the filing with the department of returns for periods other than a calendar month or quarter. The filing of quarterly sales tax returns with political subdivisions of the state is provided for by R.S. 47:337.18(A)(1)(b)(i), and is not affected by this proposed Rule.

Title 61

REVENUE AND TAXATION

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

Chapter 43. Sales and Use Tax

**§4351. Returns and Payment of Tax, Penalty for
Absorption of Tax**

A. General. All persons and dealers who are subject to state or local sales or use tax are required to file a tax return monthly, unless otherwise provided, and to remit the amount of tax due. Forms will be provided by the collector, and failure to receive a form will not relieve the dealer of the necessity to file and remit the tax due. For the purpose of collecting and remitting state and local sales or use tax, the dealer performs as the agent of the taxing authority.

1. After a dealer is properly registered for sales and use tax purposes, a sales tax identification number is assigned and the dealer is required to file monthly sales tax returns. Failure to file returns timely will cause the collector to issue an estimated proposed assessment. For those months when the dealer has no taxable sales or amounts to report, a return must still be filed marked "no sales or taxable

amounts" and signed by the dealer. Monthly returns must be filed on or before the twentieth day of the month following the month in which the tax is due.

a. Taxpayers may request approval to file consolidated sales tax returns to report sales made from multiple locations on one consolidated monthly return.

b. The collector may require taxpayers to file separate tax returns if the taxpayer is located within a tax increment financing zone or in any other instance when tax data is required by taxpayer location.

2. - 6. ...

B. Exceptions. Not all dealers are required to file returns on a monthly basis.

1. After registration, all dealers will be required to file monthly tax returns.

2. Quarterly Filing. Solely for state sales or use tax purposes, after the dealer has filed tax returns for a few months and it is determined that their tax liability averages less than \$500 per month, the dealer will be notified and required to file returns quarterly.

a. It is not necessary to apply for quarterly filing because once a determination is made by the secretary that quarterly filing is appropriate, the dealer will be notified.

b. Quarterly returns must be filed on or before the twentieth day of the first month of the next succeeding quarter.

c. Any dealer required to file on a quarterly basis, may apply for approval to file and pay taxes on a monthly basis.

i. Requests to file monthly must include justification for the exception.

ii. Monthly filing requests must be approved before the dealer may begin filing monthly.

d. Solely for filing local sales or use tax returns, R.S. 47:337.18(A)(1)(b)(i) requires dealers to file their tax returns quarterly if their tax due averages less than \$30 per month.

3. Irregular Filing. Dealers with occasional sales or use tax purchases may apply for approval to file and pay taxes on an irregular filing basis.

a. Sales and use tax returns must be filed on or before the twentieth day of the month following the month in which the taxable transaction occurred.

b. Each line of the tax return must be completed and all nontaxable amounts should be identified.

4. Alternate Filing Periods

a. Dealers must apply for approval to file sales tax returns using an alternate method.

b. Approval will only be granted if the total filings do not exceed 12 filings in a 12-month period.

c. The number of short periods during a year must be greater than or equal to the number of long periods during that same year.

d. At the beginning of each year the dealer must, after obtaining approval for the alternate period filing method, file with the collector a calendar for the year showing the alternative filing periods for that year. Amendments to approved calendars must be submitted for approval prior to the affected periods. The taxpayer's account will be reviewed to determine if the taxpayer has correctly filed returns, according to the calendar submitted at the beginning of the year. If the taxpayer does not follow the

approved alternate filing method, the returns for the year under review will be converted to a calendar month basis and the taxpayer's request to use an alternate period filing method for the subsequent year will be denied. Alternate period returns must be filed on or before the twentieth day following the close of the alternate filing period. Failure to file on or before this date will subject the dealer to delinquency charges, loss of vendor's compensation, and other charges as prescribed by law.

C. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 22:852 (September 1996), amended by the Department of Revenue, Sales Tax Division, LR 23:1530 (November 1997), amended by the Department of Revenue, Policy Services Division, LR 30:2868 (December 2004), LR 31:1101 (My 2005), LR 32:111 (January 2006), LR 33:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, July 24, 2007. A public hearing will be held on Thursday, July 26, 2007, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Returns and Payment of Tax; Penalty for Absorption of Tax

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

Implementation of this proposed rule will have no effect on local governmental unit costs. The purpose of the provision of the proposed rule limiting filings to 12 per year is to reduce costs and streamline processes within the department. Entering a 13th return to an individual account is a costly manual process.

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

This proposed amendment to the rule will have no effect on the revenue collections of the State of Louisiana or any of its political subdivisions.

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

This proposed rule will require a change in procedure for a relatively few number of sales tax filers that file more than twelve sales tax returns per year with the department. Most such dealers now submit a return for each four-week accounting period, or a total of 13 sales tax returns per year. Those dealers will reduce their sales tax filings by one per year.

The cost to the affected dealers of this change in procedure is not known, but is believed to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no effect on competition or employment.

Cynthia Bridges
Secretary
0706#049

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

Electronic Benefits Transfer—Methods of Issuing Benefits
Electronically (LAC 67:III.401-409 and 901)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III, Subpart 1, Chapter 4, Electronic Benefits Issuance System to provide delivery of benefits through electronic disbursements. Electronic disbursement has allowed the agency to provide effective and efficient disbursement of payments to our clients while eliminating the need to print and mail checks.

The agency proposes to amend Chapter 4 Electronics Benefits Issuance System in its entirety which adds the types of electronic disbursements utilized and to address program payments by Electronic Benefits Transfer (EBT) to Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Food Stamp Program Benefits. The agency intends to add these procedures to Chapter 4 as they represent additional methods of issuing benefits electronically.

The agency proposes to amend Chapter 4, re-number its Sections, and to add Chapter 9. These amendments are to remove references concerning the EBT pilot program which is obsolete, to include additional language for electronic disbursements, and to re-number all Sections. As a result of renumbering, §402 is being removed and §409 is being added. These amendments concerning electronic disbursements are pursuant to the authority granted to the department by the Department of Agriculture, Food and Nutrition Services, 7 CFR 274.12; and ACF Guidance: ACYF—IM-CC-05-03, Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations and Section 404(g) and Section 454b(b) of the Social Security Act.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 1. General Administrative Procedures

Chapter 4. Electronic Benefits Issuance System

§401. Electronic Benefits Transfer (EBT)

A. The Office of Family Support utilizes an electronic benefits issuance system referred to as Electronic Benefits Transfer (EBT) that allows eligible individuals and households to have their governmental benefits deposited into an account to pay for products purchased or to obtain authorized cash payments. Programs that utilize the EBT are Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Food Stamp Program Benefits.

B. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1, 7 CFR 274.12 and 45 CFR 95(F). Section 404(g) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support in LR 22:1231 (December 1996), amended LR 23:869 (July 1997), LR 33:

§403. Cash Benefits

A. Cash benefits and Food Stamp Program benefits shall be available through EBT in staggered cycles to on-going households beginning on the first day of each month. The last digit of the Social Security number determines the date that benefits are issued. Cash benefits will be available within the first five days of each month. Food stamp benefits will be available within the first 14 days of each month. Food stamp cases that contain elderly or disabled persons will have benefits available during the first four days of each month. Other issuance authorizations will be posted to the EBT account the day after they are authorized except in emergency circumstances in which case benefits will be available on the same day.

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 90 days from the date of availability will be moved to dormant status. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head of household or upon reapplication for assistance if the case is in inactive status. Benefits that remain in dormant status for a period of 270 days will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for

availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:

§405. Participation of Retailers (Effective October 1, 1997)

A. Retail establishments which are U.S. Department of Agriculture, Food and Nutrition Service (FNS), authorized food stamp benefit redemption points must be allowed the opportunity to participate in the state EBT system. FNS approved retailer may choose to accept EBT cards for cash transactions (FITAP and KCSP). All other retail establishments must be approved by the Agency in order to participate in the cash access component of the system. Retailers approved by the Agency to participate in cash access may be charged connection fees and/or monthly lease fees for electronic and telephone equipment lines necessary to establish connection to the EBT System.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:106 (January 1998), amended LR 33:

§407. Service Fees Effective October 1, 1997

A. Recipients of cash assistance may be charged fees for accessing cash only benefits. Retailers may charge their usual and customary check cashing fee for providing cash only benefits to FITAP recipients under the following circumstances:

1. the recipient presents a valid EBT system card (known as the "Louisiana Purchase Benefit Card"); and
2. the recipient is not using the card to obtain cash in conjunction with the purchase of goods or services through the EBT system.

B. Retailers may process cash transactions through the EBT system only while the system is available. Retailers shall not dispense cash to recipients using vouchers or other means of implied payment to the retailer.

C. Retailers are prohibited from recovering losses through the EBT system due to their errors that are discovered after the transaction is completed and the recipient has left the place of business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1(C)(3), R.S. 46:231.13, R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support in LR 24:107 (January 1998), amended LR 33:

§409. Participation of Approved Prepared-Meal Facilities

A. Facilities providing prepared meals that are authorized by the United States Department of Agriculture, Food and Nutrition Service and, in some instances, the agency, to accept food stamp benefits for prepared meals may be authorized redemption points using the EBT card. Participating facilities are subject to all applicable regulations of this provision. If found guilty of abuse, misuse or fraud by using the EBT card or benefits in a manner or intent contrary to the purpose of the Food Stamp Program, a facility may be permanently disqualified from participation

and have all equipment provided by the vendor disconnected and removed from the facility after due process.

1. A facility must maintain confidentiality in accordance with Food Stamp Program rules by requiring privacy when accepting payments or payment/contributions from recipients.

2. Settlement of funds to a facility will be made electronically as a direct deposit to the financial institution selected by the facility.

3. A facility must sign a contract with the agency's EBT vendor and be certified to the vendor's system prior to participation.

B. Types of Facilities.

1. Duly authorized non-residential facilities such as communal dining facilities or Meals-on-Wheels may accept food stamp benefits for single meals.

2. Duly authorized residential facilities such as homeless shelters or battered women's shelters may accept food stamp benefits for multiple meals or on-going food maintenance. Such establishments may accept food stamp payments or contributions not to exceed the biweekly rate of the facility. This requirement will ensure that recipients have adequate benefits remaining in their accounts upon departure from the establishment.

C. A facility with redemption of food stamp benefits of \$100 or more per month will be provided a Point-of-Sale (POS) terminal to enable acceptance of the EBT card. A facility with redemption of less than \$100 per month will utilize paper voucher authorizations for the acceptance of food stamp benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 282.1(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:

Chapter 9. Benefit Delivery

§901. Benefit Delivery

A. The Office of Family Support delivers benefits in the following manner:

1. Electronic Benefits Transfer; or
2. direct deposit; or
3. stored value cards; or
4. checks.

AUTHORITY NOTE: Promulgated by 7 CFR 274.12; and ACF Guidance: ACYF—IM-CC-05-03, Section 404(g) and Section 454b(b) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will have no effect on the stability of the family.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? This Rule will allow CCAP providers

and STEP participants to receive CCAP and STEP payments more quickly.

5. What effect will this Rule have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Interested persons may submit written comments by July 26, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-9065. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on July 26, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, at 9:15 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann Silverberg Williamson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Electronic Benefits Transfer—Methods of Issuing Benefits Electronically**

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

This rule proposes to amend LAC 67:III, Subpart 1., Chapter 4, Electronic Benefits Issuance System to remove language that is obsolete and to include additional language to show the types of EBT Benefit Delivery.

The only cost associated with this rule is the cost of publishing rulemaking and printing policy, which is estimated to be \$160 for FY 06/07. This is a one-time cost that is routinely included in the agency's annual budget.

There are no savings to state or local governmental units.

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

This rule will have no effect on revenue collections of state or local governmental units.

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

This rule proposes technical changes to language, which will not result in any costs to directly affected persons or nongovernmental groups. The agency is already utilizing EBT for payments to recipients; therefore, this rule will not provide any additional benefits to recipients because they are already receiving their payments more quickly.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0706#069

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

TANF—Adjustment of Child Support Orders (LAC 67:III.2512)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.2512, which provides for the formula for support obligation.

The Deficit Reduction Act of 2005 amends the provisions of the Social Security Act at Subsection 466 (a)(10) effective October 1, 2007. This amendment requires states to enact laws requiring the use of procedures under which every three years (or such shorter cycle as the state may determine), upon the request of either parent or if there is an assignment under Title IV-A of the Act, the state shall review and, if appropriate, adjust an order: using guidelines; a cost-of-living adjustment; or automated methods to identify orders to review and adjust, if appropriate.

Amendment of this Section is necessary to ensure continued compliance with federal regulations and avoid federal penalties and sanctions that could be imposed by the Administration for Children and Families, Office of Child Support Enforcement, the governing authority of the Support Enforcement Services program in Louisiana.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter C. Formula for Support Obligation

§2512. Adjustment of Child Support Orders

A. SES will send a notice every three years advising both parties to the support order of the right to request a review. If either party requests a review or if there is an assignment under Temporary Assistance to Needy Families (TANF), SES will conduct the review and, if appropriate, judicially seek adjustment of the order in accordance with the guidelines if the amount of the child support in the order differs from the amount of the child support award in accordance with the guidelines.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, §351, R.S. 9:311C, and the Social Security Act [466(a)(10)].

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 19:1178 (September 1993), amended LR 23:748 (June 1997), LR 24:957 (May 1998), LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule may have a positive impact on family stability, as it will insure the amount of child support ordered complies with current guidelines.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? This Rule may have a positive effect on the functioning of the family by ensuring that court ordered amounts of support remain equitable.

4. What effect will this have on family earnings and family budget? This Rule should have no effect on family earnings but may have a positive effect on family budgets by allowing for current financial conditions to be considered for the adjustment of child support orders.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? This Rule does not require any action on the part of the family or local government.

Interested persons may submit written comments by July 26, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-9065. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on July 26, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, 1st Floor, Room 129, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann Silverberg Williamson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: TANF—Adjustment of Child Support Orders

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

The proposed rule amends LAC 67:111.2512 to require the State to perform a mandatory review of child support orders for families receiving Temporary Assistance to Needy Families (TANF), and if appropriate, to judicially seek adjustment of the child support orders.

There is no additional cost associated with the rule except the cost of publishing rulemaking and printing policy, which is estimated to be approximately \$600.00. The agency is already providing this service. The agency has sufficient funds to cover this cost.

This rule may generate some savings in federal TANF funds; however, the amount cannot be determined at this time. The savings would be based on smaller grant amounts or closed grants resulting from higher modification of child support orders for TANF cases. Any savings would be used for other TANF-eligible activities.

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

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

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

There are no anticipated costs to any persons or non-governmental groups. Adoption of this Rule may have a favorable economic impact on the child support parties by ensuring that current financial conditions are considered for adjustment of court orders.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0706#070

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of State
Elections Division**

Election Expense Reimbursement
(LAC 31:I.Chapter 7)

Under the authority of R.S. 18:18(A)(5) and R.S. 36:742 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Secretary of State hereby gives notice of his intent to adopt uniform rules, regulations, forms, and instructions as to allowable election expenses and other expenses for clerks of court, registrars of voters, parish boards of election supervisors, and other election related expenses.

**Title 31
ELECTIONS**

Part I. Election Process

Chapter 7. Election Expense Reimbursement

§701. Department of State's Election Expense Manual

A. The department shall develop and adopt an Election Expense Manual that shall be utilized by clerks of court, registrars of voters, parish boards of election supervisors, and other sources (e.g., law enforcement officers) as needed to determine eligibility of reimbursement and/or payment of election expenses and other related expenses. The manual shall provide information as to the required supporting documents that must be attached to the invoice before payment can be made. In the event of an unusual expense, the manual will provide information on how to obtain approval in advance of the expense.

B. Under the provisions of the Election Code, R.S. 18:1400.3 and 1400.4, election expenses incurred by either the clerk of court, the registrar of voters, or the parish board of election supervisors will be reimbursed or paid by the Department of State from funds appropriated for that purpose. After all election expenses have been paid and reconciled, these expenses will be distributed to the state or parish governing authorities under the prorated provisions of R.S. 18:1400.3, R.S. 18:1400.4, and R.S. 18:1400.5. Invoices will then be generated to the appropriate party.

C. The procurement of all goods and services shall be done in accordance with purchasing procedures established by the Office of State Purchasing or the parish governing authority.

D. The payment for mileage shall be based upon the mileage rate established by the Office of State Travel in General Travel Regulations (Policies and Procedure Memorandum Number 49).

E. Reimbursement for copies will be based upon the state's uniform copy rate established for all state agencies. If a parish has officially adopted their own rate, a copy of the adoption of a rate must be provided to the Department of State with a request to allow the parish's copy rate.

F. The Election Expenses Manual shall be submitted to the state attorney general's office for approval. Any updates to the manual shall also receive approval by the state attorney general's office.

G. The Election Expense Manual shall be submitted to the Committee on House and Governmental Affairs and the Senate and Governmental Affairs Committee for informational purposes. Both committees shall receive any changes to the manual.

H. Copies of the final Election Expense Manual may be viewed at the Office of State Register (Claiborne Building, 1201 N. Third St., Suite 3-220, Baton Rouge, LA) or at the Department of State (Broadwing Building, Elections Division, 8549 United Plaza Blvd., Baton Rouge, LA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 18:1400.4, R.S. 18:1400.5, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§703. Clerk of Court Expenses

A. The Election Expense Manual shall clearly set forth a listing of expenses for clerks of court which are authorized for reimbursement and/or payment, and a listing of expenses for which advance approval by the secretary of state is required, and a listing of unauthorized expenses.

B. If a clerk of court's expense requires written approval in advance, the request should be submitted two weeks in advance to the secretary of state, or his designee. The approval letter or request should accompany the invoice for payment.

C. Request for approval for any emergency expense may be done by telephone or email and reduced to writing thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§705. Registrar of Voters Expenses

A. The Election Expense Manual shall clearly set forth a listing of expenses for registrars of voters which are authorized for reimbursement and/or payment, and a listing of expenses for which advance approval by the secretary of state is required, and a listing of unauthorized expenses.

B. If a registrar of voters' expense requires written approval in advance, the request should be submitted in writing to the secretary or his designee. The approval letter or request should accompany the invoice for payment.

C. Request for approval for any emergency expense may be done by telephone or email and reduced to writing thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§707. Parish Board of Election Supervisors Expenses

A. The Election Expense Manual shall clearly set forth a listing of expenses for the parish boards of election supervisors which are authorized for reimbursement and/or payment, and a listing of expenses for which advance approval by the secretary of state is required, and a listing of unauthorized expenses.

B. If a parish board of election supervisors' expense requires written approval in advance, the request should be submitted in writing to the secretary or his designee. The approval letter or request should accompany the invoice for payment.

C. Request for approval for any emergency expense may be done by telephone or email and reduced to writing thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.4, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§709. Deadline for Submission of Expenses to Department of State

A. All requests for reimbursement or payment of expenses shall be submitted to the department no later than 45 days following an election or the transaction.

B. If the request for reimbursement or payment is not received within this 45 day period, the department may notify the appropriate party by certified mail that the request will be disapproved for payment if not made within 10 days from receipt of this notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 18:1400.4, R.S. 18:1400.5, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

Family Impact Statement

The proposed Rule LAC 31:I.Chapter 7 regarding election expense reimbursement should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability, and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Copies of the proposed Election Expense Manual may be viewed at the Office of State Register (Claiborne Building, 1201 N. Third St., Suite 3-220, Baton Rouge, LA) or at the Department of State (Broadwing Building, Elections Division, 8549 United Plaza Blvd., Baton Rouge, LA). Interested persons may submit written comments to Angie Rogers LaPlace, Commissioner of Elections, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, July 25, 2007 at 10 a.m. in the

Broadwing Building, Auditorium, 1st Floor at the rear of the building, 8549 United Plaza Blvd., Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the department to receive written comments is 4:30 p.m. on July 25, 2007 after the public hearing.

Jay Dardenne
Secretary of State

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Election Expense Reimbursement**

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

There are no anticipated costs or savings to state or local governmental entities to implement the proposed rule. The rules, along with the Election Expense manual provide a more detailed version of the practice currently being utilized by the department in reimbursing election expenses.

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

There will be no effect on revenue collections of state and local government units.

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

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact of the proposed rule on competition and employment.

Charles R. Davis
Undersecretary
0706#047

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of State
Elections Division**

Election Night Transmission of Results
(LAC 31:I.Chapter 5)

Under the authority of R.S. 18:576(B), R.S. 36:742, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of state hereby gives notice of his intent to adopt uniform rules and regulations for the transmission of election results by the clerk of court's office to the Department of State on election night.

**Title 31
ELECTIONS**

Part I. Election Process

Chapter 5. Election Night Transmission of Results

§501. Responsibility of Secretary of State

A. The secretary of state shall provide each clerk of court's office with written instructions on the election results transmission process.

B. These written instructions shall provide specific uniform tasks that must be performed by the clerk of court's office to effectively transmit election night results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:576(B) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§503. Responsibility of Clerk of Court

A. The clerk of court shall follow proper procedures for transmitting all election results, as provided by the transmittal procedures established by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:576(B) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§505. Transmission of Election Night Returns

A. The clerk of court's office shall immediately load the contents of election results cartridges onto the Department of State's laptop as they are received by the clerk of court. Once all of the cartridges for a whole precinct are loaded onto the laptop, the clerk of court's office shall immediately transmit the election results to the Louisiana Secretary of State's Elections and Registration Information Network (ERIN) and verify that the system is properly transmitting election results. The Clerk of Court may verify by checking ERIN and/or the Secretary of State's website (www.GeauxVote.com) for the posting of the first transmission of election returns, or by telephoning the department's election division.

B. Once it has been verified that the first transmission was successful, the clerk of court shall transmit all remaining election results to the Department of State at least every 30 minutes or less, until all election results cartridges have been loaded and transmitted according to transmittal procedures established by the department.

C. The transmission of election results shall begin no later than 45 minutes after the polls are closed. The clerk of court shall contact the secretary of state if he will be unable to begin transmitting election results within the 45 minute deadline.

D. If the clerk of court's office has its own computer system to display election results, the results shall be loaded onto that system only after the information has been properly transmitted to the department, and such results shall be displayed and clearly identified as the unofficial results of the clerk of court.

E. Any election results posted in the clerk of court's office obtained or displayed from of the Department of State's webpage or ERIN shall be clearly identified as the Department of State's unofficial results.

F. The clerk of court shall check ERIN and/or the secretary of state's website (www.GeauxVote.com) for the posting of the election returns in their parish to verify that all precincts are posted, with 100 percent reporting before closing their office for the evening. Each race must show all precincts reporting prior to ending the transmission process.

G. The clerk of court shall not post, release, reveal, or otherwise disseminate any election results before transmitting the results to the Department of State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:576(B) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

Family Impact Statement

The proposed Rule LAC 31:I.Chapter 5 regarding election night transmission of results should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability, and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Angie Rogers LaPlace, Commissioner of Elections, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, July 25, 2007 at 10 a.m. in the Broadwing Building, Auditorium, First Floor at the rear of the building, 8549 United Plaza Blvd., Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the department to receive written comments is 4:30 p.m. on July 26, 2007 after the public hearing.

Jay Dardenne
Secretary of State

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Election Night Transmission of Results**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no anticipated costs or savings to state or local governmental entities to implement the proposed rule. The rules are merely codifying existing procedures being utilized on election night to transmit election returns.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state and local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no impact of the proposed rule on competition and employment.

Charles R. Davis
Undersecretary
0706#046

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department Of State Elections Division

Procurement of Voting System Drayage and Storage (LAC 31:III.Chapter 1)

Under the authority of R.S. 18:19 and 1371, R.S. 36:742, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq. and the Louisiana Procurement Code, R.S. 39:1551 et seq., the secretary of state hereby gives notice of his intent to adopt uniform rules, regulations, forms, and instructions as to the procurement of voting system drayage and warehouse storage.

Title 31

ELECTIONS

Part III. Procurement

Chapter 1. Procurement of Voting System Drayage and Storage

§101. Definition

Drayage means the transporting or cartage of voting equipment and supplies as directed by the secretary of state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§103. Revised Statutes

A. These regulations shall be read and interpreted jointly with R.S. 39:1551 et seq.

B. A rule or regulation shall not change any explicit contract provision, commitment, right or obligation of the state, or of a contractor under a state contract in existence on the effective date of that rule or regulation. However, to the extent possible, existing contracts shall be constructed in conformity with these rules and regulations.

C. The bid process for the storage of voting systems shall be performed by the Division of Administration, Office of Facility Planning and Control, except that the Department of State may negotiate for storage space of less than 5,000 square feet in accordance with the provisions of R.S. 18:19.

D. The Office of Facility Planning and Control shall prepare the lease between the department and lessor, and the purchase order shall be prepared by the department for the lease of warehouse storage facilities.

AUTHORITY NOTE: Promulgated in accordance with Article IV Section 12 of the Constitution, R.S. 18:19, 1353, 1382, R.S. 36:1643, and R.S. 39:1551 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§105. Invitation for Drayage and Storage Bids, Public Notice, and Bid Opening

A. All contracts for the drayage and storage of voting systems shall be awarded by competitive sealed bidding on a parish or regional basis.

B. If the secretary of state determines a bid will be awarded on a regional basis for drayage and storage, the criteria shall include but not necessarily be limited to:

1. not more than four parishes in a region;
2. not more than 1,000 voting systems in a region;
3. uniform beginning delivery time with continuous drayage for each parish in a region;

4. uniform beginning return time with continuous drayage for each parish in a region;

5. input will be solicited from each clerk of court affected to be included in a regional bid; and

6. a cost savings when bid on a regional basis.

C. Competitive sealed bidding shall be accomplished by sending out written notices to persons known to be able to provide the department's requirements, and by advertising in accordance with R.S. 18:19 and 1371 at least 30 days prior to bid opening.

1. Written notices shall be mailed to those persons who have previously requested an invitation for bids for said parish or parishes, if regional, within the previous four years. The written notices shall be mailed to any parish governing authority included in the bid to be let.

2. The written notices and advertisements shall announce:

- a. the type of contract;
- b. the parish or region for which the contract is required;
- c. the method of acquiring an invitation for bids; and
- d. the date, time, and place of bid opening.

3. Advertisements shall be published in the official journal of the state and in the official journal of the parish or parishes, if regional, for which the contract is required. Advertisements shall be published in a newspaper of general circulation printed in such parish or parishes, if regional, or, if there is no newspaper printed in such parish or parishes, if regional, in a newspaper printed in the nearest parish that has a general circulation in the parish or parishes, if regional, covered by the contract. The department may publish notices in additional journals for maximum coverage.

4. A notice shall be sent to the parish governing authority and the clerk of court of the parish or parishes, if regional, for which the contract is required. The clerk of court shall prominently post such notice in his office.

5. Notification shall also be made available on the department's election webpage at www.GeauxVote.com.

D. The invitation for bids shall contain:

1. complete description of the transportation required;
2. all applicable terms, conditions, and other requirements;
3. types and limits of insurance required;
4. bid and performance bonding requirements; and
5. factors which will be used to determine responsibility and suitability of bidders.

E. Bids shall be publicly opened and read as specified in the invitation for bids in the presence of one or more witnesses. Bidders and the public may be present at any bid opening.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:19 and 1371, R.S. 36:742, and R.S. 39:1594.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§113. Evaluation of Drayage and Storage Bids

A. Drayage bids shall be evaluated based on adherence to the specifications, terms, conditions, and suitability requirements listed in the invitation for bids. The bidder must list any deviations from these specifications, terms, or conditions.

B. Storage bids shall be evaluated based on adherence to the detailed written response to all specifications, any submitted plans, inspection of the proposed site by the Department, or an authorized representative, quality, workmanship and suitability of the proposed site for the purposes set forth in the solicitation, including but not limited to the following:

1. location of the proposed space;
2. condition of the proposed site;
3. safety of the proposed site; and
4. timeliness of the availability.

C. The bidder must list any deviations from these specifications, terms or conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and 1594.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§115. Responsibility of Drayage and Storage Bidders

A. The secretary of state or his designee may make reasonable inquiries to determine the responsibility of prospective contractors. In making his determination, the following factors will be considered:

1. has available the appropriate financial, material, equipment, and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability to meet all contractual requirements;

2. has a satisfactory record of performance on previous state contracts and with other persons;

3. is qualified legally to contract with the state of Louisiana (Prior to award of any contract, the successful bidder shall affirm by affidavit that he or she and/or the principal officers of a corporation are not currently under any felony conviction, or lesser charge on any election related matter); and

4. has reasonably supplied any information requested by the secretary of state in establishing responsibility.

B. Each bidder who is determined to be non-responsible shall be notified in writing. Such notification shall state all reasons for disqualification, and give each bidder who is proposed to be disqualified, a reasonable opportunity to refute the reasons for disqualification at an informal hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1601.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§117. Correction of Withdrawal of Drayage and Storage Bids

A. Obvious errors or errors supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders and such actions may be taken only to the extent permitted under regulations.

1. Any bid may be withdrawn prior to bid opening.

2. Minor informalities or insignificant mistakes may be waived or corrected if such will not prejudice other bidders (i.e., if the effect on price, quantity, quality, delivery, or contractual conditions is not significant). The secretary of state may waive any informalities or allow corrections by bidders if it is in the best interest of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1594(F).

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§119. Drayage Bid Guaranty and Bond

A. If specified in the invitation for bids, a bond, certified check, or money order payable to the Department of State in the amount of five percent of the bid must accompany each bid submitted.

B. If a bidder withdraws his bid after bid opening, without complying with LAC 31:III.117, or fails to execute a contract within 20 days of request, the bid bond or other security shall be forfeited and deposited into the Department of the Treasury as income not available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371, R.S. 36:742, and LAC 34:1.523.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§121. Drayage Performance Bond

A. If specified in the invitation for bids, the bidder awarded the contract must submit a performance bond or letter of credit in the penal sum of one and one-half times the contract price made payable to the Department of State.

B. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*.

C. If a contractor fails to perform in accordance with contractual obligations, the contractor forfeits the performance bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 38:2219, and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§123. Forfeiture of Bonds for Drayage

A. Actions by bidders causing forfeiture of bonds as stated in §119 and §121 herein shall be cause for removal of said bidders from the department's bid list and will support a determination of non-responsibility for the bidder(s) and its principals for a period of three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§125. General Guaranty for Drayage

A. Contractor agrees:

1. to maintain all insurance required in the invitation for bids during the term of the contract;

2. to pay all taxes, permits, licenses and fees;

3. to give all notices and comply with all laws, ordinances, rules and regulations of each city and/or town in the parish in which the contractor is performing his duties, and of the state of Louisiana;

4. to protect the state from loss in case of an accident or mishandling by contractor's employees; and

5. to make available the equipment, labor, insurance, etc. for drayage of voting machines at times other than for elections. Prices of the above mentioned to be negotiated between the contractor and department or to be determined by competitive bidding in accordance with small purchase provisions of the procurement code and subsequent applicable executive orders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§127. Award of Drayage and Storage Contracts

A. All contracts shall be awarded to the lowest responsive and responsible bidder within 30 days of bid opening, unless more time is needed by the department to investigate suitability and the bidder is notified accordingly.

1. A responsive bidder means a person who has submitted a bid which conforms in all substantive respects to the invitation for bids, including the specifications set forth in the invitation.

2. The award shall be made by unconditional acceptance of a bid without alteration or correction, except as authorized in §117.

B. If a bidder who is the lowest responsive and responsible bidder declines to accept the contract, the award may be made to the next lowest bidder or the solicitation may be canceled and re-advertised if it is determined to be in the best interest of the state. Any bidder who has declined to accept the contract previously offered shall be ineligible to bid on the subsequent solicitation. A bidder who declines a contract or fails to produce an acceptable performance bond may also be debarred from future bidding.

C. If a bidder who is the lowest bidder fails to meet all criteria as a responsive and/or responsible bidder, the award may be made to the next lowest bidder who meets all criteria as a responsive and responsible bidder or the solicitation may be canceled and re-advertised if it is determined to be in the best interest of the state.

D. In the case of "tie bids", award shall be made in a manner that will discourage future "tie bids". A written justification for the determination of award must be made by the secretary of state.

E. In-state bidders shall be preferred to out-of-state bidders on a reciprocal basis when there is a tie bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 39:1594 and 1595.1.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§129. Rejection of Drayage or Storage Bids; Cancellation of Drayage or Storage Solicitations

A. The secretary of state reserves the right to reject any and all bids when it is in the best interest of the state of Louisiana.

1. Reasons for rejecting a bid include, but are not limited to:

- a. a determination of none responsibility of a bidder(s); or
- b. the bid is not responsive (i.e., it did not meet specifications or comply with terms and conditions).

2. Reasons for canceling a solicitation include, but are not limited to:

- a. the department no longer requires the service;
- b. bids received exceeded budgeted funds or were determined by the department to be unreasonable;
- c. the solicitation was flawed (i.e., specifications were not complete or were ambiguous);
- d. there is reason to believe that the bids received may have been collusive; or
- e. there is inadequate competition indicated by low response to the solicitation.

B. When bids are rejected or a solicitation is canceled, written notices shall be given to the bidders, giving the reasons for the rejection or cancellation.

C. When a solicitation is canceled, where appropriate, bidders will be given the opportunity to bid on the new solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 39:1581 and 1599.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§131. Emergency Drayage Procurements

A. The secretary of state or his designee may declare that an emergency situation exists when:

- 1. property is subject to loss or destruction as a result of an accident or natural disaster within 30 days of an election;
- 2. the functioning of the department will be threatened; or
- 3. the health and safety of any person is threatened.

B. Every effort shall be made to obtain bids from three or more bidders. Bids shall be solicited from bonded, insured draymen or lessors currently under contract with the department.

1. If time permits, written quotations shall be solicited.

2. If time does not permit, telephone quotations shall be solicited.

C. The secretary of state shall make a written determination stating the basis for the declaration of an emergency, the procedure used prior to selecting a contractor, and the basis for awarding to a particular contractor.

D. The secretary of state shall keep all records relating to emergency procurements at least three years after the Legislative Auditor's Office have completed their audit of the department for the fiscal year in question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1598.

HISTORICAL NOTE: Promulgated by the Department of State, Elections, LR 33:

§133. Collusive Bidding or Negotiations of Drayage or Storage Contracts

A. The attorney general shall be notified in writing whenever collusion is suspected among bidders. Such notice shall contain all known facts.

B. All documents involved in a procurement in which collusion is suspected shall be retained for three years after the Legislative Auditor's Office have completed their audit of the department for the fiscal year in questions or until the attorney general notifies the department that they may be destroyed, whichever is longer. These documents shall be made available to the attorney general or his designee upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1626.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§135. Drayage and Storage Specifications

A. All specifications shall be written so as to promote as much competition as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§141. Drayage Contract Requirements

A. A contract cannot be transferred, subcontracted, or assigned prior to execution of said contract. After execution of the contract, a contractor may assign or subcontract his obligations under the contract only with the written consent of the secretary of state, which consent shall not be unreasonably withheld.

B. To the extent that a prospective contractor proposes to utilize subcontractors in performing the contract, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system determined by the secretary of state. All subcontractors must meet the same standards for responsibility, bonds, and insurance as the prime contractor.

C. If a bidder is the lowest responsible and responsive bidder in more than one parish, bidders will be limited to contracting for parishes with an aggregate total of not more than 1,000 voting systems or four parishes. In the event that those numbers are exceeded, the contracts will be awarded in the order in which bids were taken.

D. The term of the contract shall be one year or less with an option to renew for two additional one-year terms. All contracts shall end on December 31.

E. If the holder of multiple drayage contracts fails to perform in accordance with the provisions of any of his contracts, the secretary of state may cancel any and all contracts with that contractor. In addition, the contractor may be suspended from future bidding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371, R.S. 36:742 and R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§143. Right to Protest Drayage or Storage Contract Award

A. All proceedings herewith shall be carried out in accordance with the Conduct of Hearing Rules set forth in LAC 34:I.Chapter 31.

B. Any bidder may protest a solicitation or an award of a contract to the secretary of state.

C. In regard to the solicitation of a drayage or storage contract, the protest must be made in writing at least two days prior to the opening of bids.

D. In regard to the award of any contract, a written protest must be made within 14 days after the contract is awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1671.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§145. Legal and Contractual Remedies for Drayage and Storage of Voting Systems

A. The secretary of state or his designee is authorized to settle and resolve any protest prior to court action. If a protest is not resolved by mutual agreement, the secretary of state or his designee shall, within 14 days, issue a decision in writing. The decision shall:

1. state the reasons for the action taken; and
2. inform the protestant of its right to administrative and judicial review as provided in Part VI of the Procurement Code.

B. Notice of decision shall be furnished immediately to the protestant and any other party intervening.

C. The decision of the secretary of state or his designee shall be final unless:

1. the decision is fraudulent; or
2. the person has appealed to the Commissioner of Administration in accordance with R.S. 39:1683 and R.S. 39:1685.

D. If a protest is lodged as provided for in these regulations, the department shall not proceed with the solicitation or award, unless the secretary of state declares in writing that proceeding is necessary to protect the substantial interest of the state. Upon such determination, no court shall enjoin progress under award except after notice and hearing.

E. When a protest is sustained and the protesting bidder should have been awarded the contract but is not, the bidder shall be reimbursed for reasonable costs associated with the solicitation, including bid preparation costs other than attorney's fees. Any administrative determination of such costs shall require approval of the attorney general.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 39:1671, R.S. 18:1673 and R.S. 18:1685.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§147. Suspension and Debarment of Drayage or Storage Contractor

A. A bidder and its principal officers and agents may be debarred or suspended from consideration for award of contracts during an investigation for probable cause if it is in the best interests of the state.

B. The secretary of state may suspend or debar a person for cause after notice to the bidder has been given and the bidder has had a reasonable opportunity to respond. A bidder may be suspended if the secretary of state determines that there is probable cause to believe that the bidder has engaged in any activity to lead to debarment.

1. The period of time for the suspension of a drayage or storage contract shall be a minimum of one complete cycle of bidding in all parishes.

2. The period of time for debarment of a drayage or storage contract shall be a minimum of two complete cycles of bidding in all parishes.

C. Causes for debarment shall be determined in accordance with R.S. 39:1672(C).

D. In addition to the provisions of R.S. 39:1672(C), the secretary of state may debar a bidder for the following reasons:

1. the bidder has withdrawn a bid after an award, for whatever reason, more than once; or

2. the secretary of state may declare other specific reasons for suspension or debarment which is in the best interests of the state.

E. The secretary of state shall notify the debarred or suspended bidder in writing of the decision stating the reasons for the action taken and the amount of time of suspension or debarment. Such notification shall also inform the debarred or suspended bidder's rights to administrative and judicial review.

F. The decision of the secretary of state or his designee shall be final unless:

1. the decision is fraudulent; or
2. the person has appealed to the commissioner of administration in accordance with R.S. 39:1684.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 39:1672.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§149. Repeal Prior Rules and Regulations

A. All rules and regulations on voting machine drayage and storage that were previously adopted by the Department of Elections and Registration are hereby repealed in their entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

Family Impact Statement

The proposed Rule LAC 31:III.Chapter 1 regarding procurement of voting system drayage and warehouse storage should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability, and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Angie Rogers LaPlace, Commissioner of Elections, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, July 25, 2007 at 10 a.m. in the Broadwing Building, Auditorium, 1st Floor at the rear of the building, 8549 United Plaza Blvd., Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the department to receive written comments is 4:30 p.m. on July 26, 2007 after the public hearing.

Jay Dardenne
Secretary of State

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Procurement of Voting
System Drayage and Storage**

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

There are no anticipated costs or savings to state or local governmental entities to implement the proposed rule. The proposed rule coincides with current practices which are being utilized when procuring drayage or warehouse storage for voting systems.

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

There will no effect on revenue collections of state local government units.

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

There will be no costs and/or economic benefits to directly affected person or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact of the proposed rule on competition and employment.

Charles R. Davis
Undersecretary
0706#045

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of State
Elections Division**

**Recognition of Political Parties
(LAC 31:I.Chapter 9)**

Under the authority of R.S. 18:441, R.S. 36:742, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Secretary of State hereby gives notice of his intent to adopt uniform rules and regulations specifying the minimum guidelines to be used in recognizing political parties in Louisiana.

**Title 31
ELECTIONS**

Part I. Election Process

Chapter 9. Recognition of Political Parties

§901. Purpose

A. The purpose of this rule is to establish minimum guidelines to be used by the secretary of state in recognizing political parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§903. Definitions

A. For the purposes of this rule, the following definitions shall apply.

Deceptively Similar—may mean a political party name which deceives the general public into believing that said political party is that of another party, when in fact, the two parties are not affiliated with each other.

Identical—may mean the same exact political party name, even though the two parties are not affiliated with each other.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§905. Political Party Recognition Based on Registered Voters

A. A political party which seeks recognition must have at least 1,000 registered voters in the state of Louisiana who are registered as being affiliated with such political party.

B. A political party shall request a list of registered voters from the secretary of state who are registered as being affiliated with the political party who is seeking recognition; in order to verify that the political party has at least 1,000 registered voters. The secretary of state shall date this list of registered voters.

C. This list of registered voters shall be provided by the secretary of state's office, using the political party name given by the requestor, and shall be limited to the exact name provided. For example, a request for a list of registered

voters with the "Green Party" would not include "Green," "Green Grass," "Green Labor," "Green Peace," "Greenpiece" or "Greens."

D. All of the following requirements shall be met by the political party for recognition by the secretary of state.

1. A notarized registration statement must be filed with the secretary of state no later than 90 days prior to the opening of the qualifying period for any election.

2. The registration statement must be accompanied by a fee in the amount of \$1,000, made payable to the Department of State only by certified or cashier's check on a state or national bank or credit union, United States postal money order, or money order issued by a state or national bank or credit union or money order.

3. The registration statement must be accompanied by a list of registered voters with the exact political party name, showing at least 1,000 voters and dated no less than 90 days prior to the opening of the qualifying period for any election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§907. Defects in a Registration Statement

A. The secretary of state may, at his discretion, reject the filing of a registration statement for any of the following reasons.

1. A political party's name is identical to the name of any other existing political party, yet the two political parties are not affiliated based on official party documentation.

2. A political party's name is deceptively similar to the name of any other existing political party, based on official party documentation.

3. A political party's name is deliberately misleading or fraudulent in any respect.

4. A political party's emblem is deceptively similar to an emblem or trademark of any other existing political party.

5. A political party that attempts to be recognized in this state with the name "Independent" or "the Independent Party."

6. A political party's registration statement is incomplete and/or does not provide the required information. In such a case, the political party may resubmit a completed notarized registration statement without having to pay an additional registration fee. The secretary of state must receive a resubmitted registration statement no less than 90 days prior to the opening of the qualifying for any election, for recognition to apply in that primary or general election.

B. The secretary of state shall return the rejected registration statement, along with the registration fee, except in the case of an incomplete statement, where the political party chooses to resubmit a completed notarized registration statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§909. Objection to a Registration Statement

A. Any person aggrieved by the recognition of political party based on the filing of a registration statement alleged to be false, fraudulent, deceptive, substantially misleading or otherwise prohibited by law may file an objection in writing to the secretary of state.

B. The objection must be filed within two years of the political party's registration filing.

C. The secretary of state must determine the validity of the objection, by determining whether the political party's registration statement is defective, based on the objection and any official documentation provided with the objection.

D. If the secretary of state determines that the objection is valid, he shall declare the political party's registration statement null and void and cancel the political party's recognition. The secretary of state shall provide written notice of his decision and the effective date to the political party.

E. The secretary of state shall not return the registration fee when a political party's registration is canceled pursuant to the provisions herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§911. Cessation of a Recognized Political Party

A. A political party that has been recognized in Louisiana and the rules herein shall cease to be recognized if no registered member of the party qualifies as a candidate in a primary election for any period of four consecutive years.

B. The four year consecutive period shall run from the date the political party becomes recognized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§913. Notification

A. The secretary of state shall provide written notice to a political party that seeks recognition that the political party's registration statement is rejected for any of the reasons set forth in §907 through §911 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

Family Impact Statement

The proposed Rule LAC 31:I:Chapter 9 regarding recognition of political parties should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability, and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Angie Rogers LaPlace, Commissioner of Elections, Department of State, P. O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for July 25, 2007 at 10 a.m. in the Broadwing Building, Auditorium, First Floor at the rear of the building, 8549 United Plaza Blvd., Baton Rouge, LA. At that time, all

interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the department to receive written comments is 4:30 p.m. on July 26, 2007 after the public hearing.

Jay Dardenne
Secretary of State

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Recognition of Political Parties

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

There are no anticipated costs or savings to state or local governmental entities to implement the proposed rule. The proposed rule adopts minimum guidelines to be used in recognizing political parties in Louisiana consistent with current law and is merely codifying existing procedures.

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

There will be no effect on revenue collections of state and local government units.

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

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact of the proposed rule on competition and employment.

Charles R. Davis
Undersecretary
0706#044

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of State Elections Division

Registrars of Voters
(LAC 31:II.Chapter 1)

Under the authority of R.S. 18:18, R.S. 18:31, R.S. 18:53, R.S. 18:55, R.S. 18:59, R.S. 36:742, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary of state hereby gives notice of his intent to adopt uniform rules and regulations for the following: procedures for registrars of voters to use in the conduct of their office and the entry of data on the statewide voter registration system; adopt uniform fees schedules for the department to charge for the procurement of statewide voter registration lists; procedures for merit evaluations of unclassified employees; professional review committee; procedures for annual expenditure report; and procedures for the removal of a registrar of voters by the state board of election supervisors.

Title 31 ELECTIONS

Part II. Voter Registration

Chapter 1. Registrars of Voters

§101. ERIN Manual

A. The Department of State operates a statewide voter registration computer system for the registration of voters throughout the state, the Elections and Registration Information Network, commonly referred to as "ERIN."

B. The secretary of state shall provide all registrars of voters with an ERIN Manual to be utilized with respect to the statewide voter registration computer system. This manual shall establish procedures with respect to all records, data, and information required for the registration of voters and the transfer of information to the department. All registrars of voters shall utilize this manual to ensure the proper registration of voters. A uniform cost for the preparation of lists of registered voters shall be included in the user manual. Any updates of the manual provided by the department to the registrars of voters shall be incorporated into the manual by each registrar of voters.

C. The ERIN Manual shall be submitted to the Committee on House and Governmental Affairs and the Senate and Governmental Affairs Committee for informational purposes. Both committees shall be kept informed of any changes to the manual.

D. Copies of the ERIN Manual can be viewed at the Department of State, Elections Program, Broadwing Building, First Floor, 8549 United Plaza, Baton Rouge, LA or at each office of the registrar of voters throughout the state, or at the Office of the State Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:31, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§103. Sale of Voter Registration Lists

A. The Department of State generates voter registration lists through ERIN and establishes guidelines that shall be provided to the registrars of voters for the sale of voter registration lists to the general public.

B. Voter registration lists can either be requested through the department's website www.GeauxVote.com or through a registrar of voter's office. All lists must be paid for in advance based upon an estimate provided by either the department or registrar of voters to the client. Payment shall either be given to the department or the registrar of voters' office. If the registrar of voters' office receives the payment, the registrar shall fax a copy of the check to the department and mail the check to the department within 48 hours. Checks and money orders made payable to the Department of State are the only acceptable forms of payment.

C. The department hereby establishes the cost schedules detailed below for the sale of voter registration lists:

1. Hardcopy Lists

Number of Voters	Cost
1-2,000 voters	\$35
2,001 +	\$0.0175 x number of voters, not to exceed \$5,000
(If the total number of voters is less than 2,001, the minimum charge of \$35 plus \$7.50 delivery applies.) Each additional copy of a list would cost one-half the cost of the original list, plus the delivery charge.	

a. This list can be requested without districts and shall contain the following information: parish, registration number, ward, precinct, name, party, year of birth, sex, race, last-vote-date, residence, and mailing addresses. If requested, the list will provide telephone numbers.

b. This list can be requested with districts and shall contain the same information above plus the following information: congressional, senatorial, representative, police jury/council, justice of the peace, school board, city district, district court, public service commission, board of elementary and secondary education, tax ward district, and eight special districts. If requested, the list will provide telephone numbers.

2. Mailing Labels (24 labels on a page)

Number of Voters	Cost
1-2,000 voters	\$40
2,001 +	\$0.02 x number of voters, not to exceed \$5,000
(If the total number of voters is less than 2,001, the minimum charge of \$40 plus \$7.50 delivery applies.) Each additional page of labels would cost \$0.02 times the number of voters, plus the delivery charge.	

a. These labels may be ordered with the following information:

- i. voters name and mailing address only; or
- ii. voters name, mailing address, ward and precinct.

3. CD-ROM

Number of Voters	Cost
1-2,000	\$20
2,001 +	\$0.01 x number of voters, not to exceed \$5,000
(If the total number of voters is less than 2,000, the minimum charge of \$20 plus \$7.50 deliver applies.) Each additional copy of the CD-Rom would cost one-fourth the cost of original, plus the delivery charge.	

a. Data on the CD is in text format.

b. The CD-Rom shall provide the following information: parish, name, ward, precinct, party, residence and mailing addresses, sex, race, year of birth, status, registration date, registration number, last 20 dates voted, and all district information.

c. If requested, the telephone number will be provided.

4. Electronic Mail

Number of Voters	Cost
1-2,000	\$20
2,001 +	\$0.01 x number of voters, not to exceed \$5,000
(If the total number of voters is less than 2,000, the minimum charge of \$20 applies. There is no delivery charge for electronic mail.)	

a. Data submitted through electronic mail shall be in text format.

b. The electronic mail transmittal shall provide the following information: parish, name, ward, precinct, party, residence and mailing addresses, sex, race, year of birth, status, registration date, registration number, last 20 dates voted, and all district information.

c. If requested, the telephone number will be provided.

5. Delivery. The cost for courier service shall be \$7.50 per job, except for jobs picked up or mailed electronically.

6. Special Requests. The prices above apply to requests using the standard criteria. A \$100 per hour programming charge will be added for any "special request." Registrars of voters must check with the information technology section of the department prior to agreeing to a request that does not conform to the standard criteria.

D. The client shall review the list immediately upon receipt. If there is a problem with the list, the client must immediately notify the department or registrar of voters. If the client has a valid reason for seeking a new list or getting a refund, they have seven days to return the original voter registration list to the department or registrar of voters to receive a new list or a refund. If the original list has been reproduced, no refund will be issued and a new list will be subject to the appropriate costs. If the reasoning is determined to be justifiable by the department, a new list will be provided or a refund issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:31, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§105. Merit Evaluation of the Registrar of Voters

A. The secretary of state hereby designates the Director of NVRA, commonly referred to as the Director of Registration, in the Department of State to perform the annual evaluation of parish registrars of voters, subject to approval by the commissioner of elections.

B. Annually, the secretary or his designee shall prepare written instructions and forms which shall be submitted to the registrars of voters no later than November 1 for their evaluations. The form shall include mandated duties, non-mandated duties, and extended duties.

C. The parish registrar of voters will have until December 15 to submit his completed form with supporting documentation to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:55, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§107. Merit Evaluations of the Chief Deputy and Confidential Assistant

A. The parish registrar of voters shall perform the annual evaluation of the chief deputy and confidential assistant.

B. Annually, the secretary or his designee shall prepare written instructions and forms which shall be submitted to the registrars of voters for reviewing the chief deputy and confidential assistant's performance no later than November 1.

C. The parish registrar of voters shall be responsible for evaluating his chief deputy and confidential assistant. These evaluations shall be submitted to the department no later than December 15 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:59, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§109. Professional Review Committee

A. The commissioner of elections shall submit a formal notification to the Professional Review Committee of the Louisiana Registrar of Voters Association of any registrar of voters who does not perform a mandated duty as defined by the annual performance evaluation form.

B. The Professional Review Committee shall investigate the matter and submit a copy of its findings to the Board of Directors of the Louisiana Registrar of Voters Association. The Board of Directors shall submit a written copy of the findings and any recommended corrective action to the commissioner of elections and the secretary of state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§111. Annual Expenditure Report to Parish Governing Authority

A. Annually, the secretary of state shall provide each parish registrar of voters with an expenditure summary report for all expenses paid by the state on behalf of each registrar of voters. The report shall be mailed out by the department no later than January 31. This information should be combined with expenses paid by the parish police jury into a consolidated report. This report must be submitted annually by the registrar of voters to the parish governing authority and parish clerk of court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 36:742, and R.S. 42:283.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§113. Removal of Registrar of Voters for Cause

A. A proceeding for the removal of a registrar shall be commenced by the state board of election supervisors upon the receipt of a resolution from a parish governing authority which includes the following information:

1. accusations of willful misconduct relating to the registrar's official duty, or willful and persistent failure to perform his duties, or persistent public conduct prejudicial to the administration of the laws relative to the registration of voters that brings the office into disrepute, or conviction of a felony; and

2. favorable adoption of the resolution by at least two-thirds of the membership of the parish governing authority.

B. A proceeding for the removal of a registrar may be commenced by the state board of election supervisors upon the written complaint filed with the state board of election supervisors by one or more natural persons of legal age who reside within the parish served by the registrar whose removal is sought, which complaint includes the following information:

1. the name and mailing address of each complainant;
2. the name of the registrar whose removal is sought and the parish he serves;

3. reference to the specific grounds for removal as set out in R.S. 18:53, upon which the complaint is based;

4. a full statement of the facts, commissions or omissions upon which the complaint is based, including the names of persons, dates, places and circumstances, so as to fully inform the registrar as to the factual basis for the complaint. No evidence of any fact not alleged in the complaint shall be brought before the board during the hearing;

5. a clear statement that the complainant is seeking the removal of the registrar from office; and

6. signed by each complainant and verified under oath before a notary or two witnesses.

C. The original resolution or complaint shall be filed with the chairman of the state board of election supervisors by personal delivery to his office, or by regular or certified mail. The parish governing authority or complainant shall also mail a copy of the resolution or complaint to the accused registrar by certified mail, return receipt requested with restricted delivery to addressee only.

D. Upon receipt of the resolution or complaint, the chairman of the board shall examine each resolution or complaint and may reject the resolution or complaint for filing if he finds that it fails to state a cause of action for removal pursuant to R.S. 18:53 or fails to comply with the filing requirements herein. If the chairman rejects the filing of the resolution or complaint, he shall notify the board, the parish governing authority or complainant and the registrar accordingly. If the chairman accepts the filing of the resolution or complaint, he shall notify the board, the registrar, and either the parish governing authority or the complainant of the scheduled hearing date, time and place, to be set no later than 30 days from receipt of the complaint. All notices to the registrar and parish governing authority or complainant shall be by certified mail return receipt requested with restricted delivery. The notice of hearing shall be in compliance with the provisions of R.S. 49:955.

E. If the chairman rejects the filing of the resolution or complaint, the parish governing authority or complainant may amend the resolution or complaint to state a claim within 10 days of notification of the rejection of the filing. If the parish governing authority or complainant fails to file an amended resolution or complaint within the time allowed, the chairman of the board shall dismiss the resolution or complaint.

F. The board may consolidate complaints if they relate to common issues or to the same actions or events.

G. The board shall compile and maintain an official record in connection with each resolution or complaint, containing at a minimum a copy of the following:

1. the resolution or complaint, and any board authorized amendments;

2. any written submissions by the parish governing authority, respondent(s), or other interested persons, including any responses authorized by the board;

3. a written report of any investigation conducted or commissioned by the board;

4. copies of all notices and correspondence to or from the board in connection with the resolution or complaint;

5. originals or copies of any tangible evidence produced at any hearing conducted pursuant to these rules;

6. original tape recording produced at any hearing conducted pursuant to these rules and a copy of any hearing transcript; and

7. a copy of any final decision issued by the board.

H. The respondent registrar may file a written answer to the resolution or complaint, notarized or witnessed as provided for herein, prior to the hearing wherein he may admit or deny specifically each of the allegations of the resolution or complaint, and otherwise answer to the resolution or complaint. The board for good cause shown may allow an extension of the time period for answering, if requested by the respondent.

I. Postponements or continuances of any hearing are subject to board approval.

J. Either party or the board, at their cost, may order copies of the transcription of the testimony using the state's uniform fee schedule for copies of public records.

K. The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act. A complainant, respondent, or other person who testifies or presents evidence at the hearing may, but need not, be represented by an attorney.

L. The board shall render its decision within 10 days after the hearing. All decisions shall comply with the requirements of R.S. 49:958.

M. A rehearing may be requested within 10 days from the date of the board's written decision on the grounds listed in R.S. 49:959, and if requested timely, the board shall follow the procedures for rehearing in accordance with R.S. 49:959.

N. If the respondent registrar requests a rehearing, the decision upon rehearing, or denial thereof, shall become final 30 days after the mailing date shown thereon, unless the registrar files a petition for judicial review by trial de novo in the Nineteenth Judicial District Court before the expiration of the 30 day period.

O. All filings and correspondence shall be addressed to: State Board of Election Supervisors, Secretary of State, Department of State, Box 94125, Baton Rouge, LA. 70804-9125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 36:742 and R.S. 18:53.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

§115. Repeal Prior Rules and Regulations

A. All previously adopted rules promulgated by the Department of State and the Department of Elections and Registration regarding registrars of voters and the ERIN Manual are hereby repealed in their entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:

Family Impact Statement

The proposed Rule LAC 31:II.Chapter 1 regarding registrars of voters should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability, and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Copies of the ERIN Manual may be viewed at the Office of State Register (Claiborne Building, 1201 N. Third St., Suite 3-220, Baton Rouge, LA) or at the Department of State (Broadwing Building, Elections Division, 8549 United Plaza Blvd., Baton Rouge, LA). Interested persons may submit written comments to Angie Rogers LaPlace, Commissioner of Elections, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, July 25, 2007 at 10 a.m. in the Broadwing Building, Auditorium, First Floor at the rear of the building, 8549 United Plaza Blvd., Baton Rouge, LA. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for the department to receive written comments is 4:30 p.m. on July 26, 2007 after the public hearing.

Jay Dardenne
Secretary of State

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Registrars of Voters

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

There are no anticipated costs and savings to state or local governmental entities to implement the proposed rule. Proposed rule coincides with current practices which are being utilized and with the current fee structure and media formats, including lists on CD-ROM and lists through electronic mail, being utilized.

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

There will be no effect on revenue collections of state and local governmental units.

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

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact of the proposed rule on competition and employment.

Charles R. Davis
Undersecretary
0706#043

Robert E. Hosse
Staff Director
Legislative Fiscal Office