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Executive Orders

EXECUTIVE ORDER BJ 08-18

Gulf Opportunity Zone Advance Refunding
Bond Allocation—Port of New Orleans

WHEREAS, PL 109-135, also known as the Gulf Opportunity Zone Act of 2005 (hereafter "the Act"), was enacted to provide tax incentives to assist in the recovery and rebuilding efforts in certain areas affected by Hurricanes Katrina, Rita, and Wilma, and requires the governor of the state of Louisiana (hereafter "the State") to designate any advance refunding bonds as bonds issued pursuant to Section 1400(N) of the Act;

WHEREAS, the Port of New Orleans (hereafter "the Issuer") proposes to issue twenty million ($20,000,000) dollars of its Revenue and Refunding Bonds, Series 2006 (hereafter "the Bonds") for the purpose of advance refunding a portion of the Issuer's outstanding Port Facility Revenue Bonds, Series 2001, Port Facility Revenue Bonds, Series 2002, Port Facility Revenue Bonds, Series 2003, which would otherwise not be able to be refunded on a tax exempt basis; and

WHEREAS, pursuant to the Act and Executive Order No. BJ 2008-16, issued on April 21, 2008, the governor of the state of Louisiana is required to designate such Bonds as Advance Refunding Bonds under the Ceiling;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2008 Ceiling as Advance Refunding Bonds in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
$20,000,000	Port of New Orleans	Port Facility Refunding Revenue Bonds Series 2008

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 of this Order.

SECTION 3: The allocation granted herein shall be valid and in full force and effect for 240 days from issuance of this Order.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 23rd day of May, 2008.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0806#075

EXECUTIVE ORDER BJ 08-19

Procedures in Cases before Military
Courts in the State of Louisiana

WHEREAS, The Louisiana National Guard is an operational component of the United States Departments of the Army and the Air Force and is vital to the homeland security of the State of Louisiana;

WHEREAS, The need for special laws and regulations in relation to military discipline and the consequent need and justification for a special and exclusive system of military justice has been recognized by the Louisiana Legislature in the enactment of the Louisiana Code of Military Justice, La. R.S. 29:101 et seq.; and

WHEREAS, La. R.S. 29:136 authorizes the governor to prescribe the procedures, including the modes of proof, in cases before the military courts of the State of Louisiana;

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

SECTION 1: In accordance with the provisions of the Louisiana Code of Military Justice, La. R.S. 29:136 in particular, the procedure in cases before military courts of the State of Louisiana are hereby prescribed; such procedures shall be the Rules for Court Martial prescribed in the 2008 Edition of the Manual for Courts Martial, United States, in all ways not inconsistent with Louisiana law and regulation.

SECTION 2: Further, and in accordance with La. R.S. 29:136, the modes of proof in cases before military courts of the State of Louisiana are hereby prescribed; such modes shall be the Military Rules of Evidence prescribed in the 2008 Edition of the Manual for Courts Martial, United States, in all ways not inconsistent with Louisiana law and regulation.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of May, 2008.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0806#076

Emergency Rules

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Board of Veterinary Medicine

Veterinary Practice (LAC 46:LXXXV.714)

The Department of Health and Hospitals, Board of Veterinary Medicine (the "Board") readopts this Emergency Rule, effective June 5, 2008, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, and the Veterinary Practice Act, R.S. 37:1569, as well as R.S. 29:769(E). The Emergency Rule is to remain in effect for a period of 120 days or until adoption of the final Rule, whichever occurs first. The Emergency Rule was initially adopted by the board on February 14, 2008, which was published in the March 2008 issue of the *Louisiana Register.* It is necessary to readopt the Emergency Rule which is being done so within the 120 day period required by law. There is no lapse in the application of the Emergency Rule which will remain in effective for the next 120 days from June 5, 2008 or until adoption of the final Rule, whichever comes first. The board is also proceeding with the promulgation of a regular Rule on this matter which is anticipated to become a final rule June 20, 2008, which is within the effective period of the Emergency Rule hereby adopted.

In keeping with its function set forth by the state legislature in R.S. 29:769(E) and R.S. 37:1518A (9) of the LA Veterinary Practice Act, the board adopts this Emergency Rule establishing the requirements for a qualified student at LSU-SVM to perform limited duties in a support capacity, at approved shelters on shelter animals only, under the direct supervision of faculty veterinarians licensed with the board. It is the primary purpose of this emergency action to identify the limitations of the student's duties and restrict the student from entering the realm of veterinary medical practice for which a license is required by law after the successful completion of competency requirements. It also holds the supervising faculty veterinarians licensed with the board accountable for the students under their charge.

The board wishes to support the education effort of future licensed veterinarians, but must properly discharge its legal mandate of insuring the health, welfare, and protection of the public and animals receiving veterinary medical care. Without limitations established by rule regarding the student program, the potential for eminent peril to public health and safety will exist for the public and animals, more specifically animals owned by members of the public. In addition, this Emergency Rule is necessary in light of recent student grant proposals for shelter medicine to LSU-SVM by the Humane Society of the United States.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXXXV. Veterinarians
Chapter 7. Veterinary Practice
§714. Student/Shelters and Faculty Veterinarian.

A. A person who is a regular student in an accredited veterinary school who is performing duties or actions assigned by his instructors as part of his curriculum under the direct supervision of a faculty veterinarian who is licensed by the board; however, the student's role shall be limited to assisting the licensed faculty veterinarian in a support capacity during assessment, diagnosis, treatment, and surgery in the shelters pre-approved by the board on shelter animals only. For example, observation of procedures and services by the student and the performance of menial support tasks to assist the licensed faculty veterinarian are legally permissible. However, the licensed faculty veterinarian must be the primary veterinarian, or surgeon of record, in all situations. To allow the student to perform beyond the support capacity as defined in this rule would, in effect, permit the student to enter into the realm of veterinary practice without first having to meet the requirements necessary to have a license as established by the Louisiana Veterinary Practice Act and the Louisiana Board of Veterinary Medicine rules.

B. Direct supervision is defined as "continuous, visual, and on-site supervision" which shall only be performed by a faculty veterinarian licensed by, and accountable to, the Louisiana Board of Veterinary Medicine as per its regulatory authority. Accordingly, the licensed faculty veterinarian and the program shall comply with all requirements established by the Veterinary Practice Act and the board's rules regarding the practice of veterinary medicine including, but not limited to, such practice standards as a proper surgical facility, record keeping, aftercare, prescriptions, drug/device maintenance, etc. The faculty veterinarian as a licensed veterinarian shall be ultimately responsible, and accountable to the board, for the duties, actions, or work performed by the student; however, at no time shall the student's role extend beyond assisting the licensed faculty veterinarian in a support capacity during assessment, diagnosis, treatment, and surgery in the shelters pre-approved by the board on shelter animals only.

C. The tasks assigned to a student is at the discretion of the supervising faculty veterinarian licensed by the board who shall be ultimately responsible and held accountable by the board for the duties, actions, or work performed by the student, however, at no time shall the student's role extend beyond assisting the licensed faculty veterinarian in a support capacity during assessment, diagnosis, treatment,

and surgery. In addition, the tasks assigned to the student shall encompass the care, treatment, and/or surgery of one shelter animal at a time at a shelter pre-approved by the board. Again, the licensed faculty veterinarian must be the primary veterinarian, or surgeon of record, in each individual situation.

D. Prior to commencement of a student's participation in a program, the supervising faculty veterinarian licensed by the board must first notify the board of such on board approved forms.

E. A student shall not be permitted to perform supervision of any nature, as defined in Rules 700 and 702, of the tasks or procedures performed by other personnel of the shelter at issue.

F. The duties, actions or work performed by a student shall not be considered a component of, nor applied to, the requirements regarding the preceptorship program established by the board. The period of time necessary to satisfactorily complete a preceptorship program shall not run concurrently with the period of time a student performs or works as such.

G. A student extern who is working during a school vacation for a licensed veterinarian shall be under continuous, visual, and on site supervision of a veterinarian licensed by the board. The supervising veterinarian shall be ultimately responsible and held accountable by the board for the duties, actions, or work performed by such person; however, at no time shall the student's role extend beyond observing the supervising veterinarian in a support capacity during assessment, diagnosis, treatment, and surgery. The student extern shall not perform supervision of any nature, as defined in Rules 700 and 702, of the tasks or procedures performed by other personnel of the facility at issue. Furthermore, the duties, actions or work performed by the student extern shall not be considered a component of, nor applied to, the requirements regarding the preceptorship program, nor shall it run concurrently with, or be any part of the board's preceptorship program requirements

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 29:1479 (August 2003), amended LR 34:

Wendy D. Parrish
Administrative Director

0806#035

DECLARATION OF EMERGENCY

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

Disproportionate Share Hospital Payments
Distinct Part Psychiatric Unit Expansions
(LAC 50:V.2709)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:V.2709 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated an Emergency Rule to repeal and replace all Rules governing disproportionate share hospital (DSH) payment methodologies (*Louisiana Register*, Volume 33, Number 10). In compliance with Act 18 of the 2007 Regular Session of the Louisiana Legislature, the department amended the October 20, 2007 Emergency Rule to adopt provisions for the reimbursement of uncompensated care costs for psychiatric services provided by non-state acute care hospitals that expand their distinct part psychiatric units and enter into an agreement with OMH (*Louisiana Register*, Volume 34, Number 1). The department amended the January 1, 2008 Emergency Rule to establish provisions for DSH payments to non-state acute care hospitals that enroll a new distinct part psychiatric unit and enter into an agreement with OMH (*Louisiana Register*, Volume 34, Number 3).

The department subsequently promulgated a Notice of Intent (*Louisiana Register*, Volume 34, Number 1) and a final Rule to establish the provisions governing DSH payments in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department now proposes to amend the April 20, 2008 final Rule governing DSH payments to continue the provisions of the March 3, 2008 Emergency Rule and place these provisions in the appropriate location in the *Louisiana Administrative Code*. This action is being taken to avoid imminent peril to the health and welfare of Louisiana citizens who are in critical need of inpatient psychiatric services.

Effective July 2, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to non-state acute care hospitals.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Medical Assistance Program—Hospital Services
Subpart 3. Disproportionate Share Hospital Payments
Chapter 27. Qualifying Hospitals

§2709. Distinct Part Psychiatric Unit Expansions

A. Effective for dates of service on or after January 1, 2008, Medicaid enrolled non-state acute care hospitals that expand their distinct part psychiatric unit beds, and sign an addendum to the Provider Enrollment form (PE-50) by March 1, 2008 with the Department of Health and Hospitals, Office of Mental Health, shall be reimbursed for their net uncompensated care costs for services provided to adult patients, age 18 and over, who occupy the additional beds.

B. Effective for dates of service on or after March 3, 2008, Medicaid enrolled non-state acute care hospitals that enroll a new distinct part psychiatric unit, and sign an addendum to the Provider Enrollment form (PE-50) by April 3, 2008 with the Department of Health and Hospitals, Office of Mental Health, shall be reimbursed for their net uncompensated care costs for services provided to adult patients, age 18 and over, who occupy the additional beds.

C. The net uncompensated care cost is the Medicaid shortfall plus the cost of treating the uninsured.

D. The amount appropriated for this pool in SFY 2008 is $7,000,000. If the net uncompensated care costs of all hospitals qualifying for this payment exceeds $7,000,000, payment will be the lesser of each qualifying hospital's net uncompensated care costs or its pro rata share of the pool calculated by dividing its net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying for this payment and multiplying by $7,000,000.

E. Qualifying hospitals must submit costs and patient specific data in a format specified by the department.

1. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

F. Payments shall be made on a quarterly basis.

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 34:

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

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

Alan Levine
Secretary

0806#056

DECLARATION OF EMERGENCY

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

Nursing Facility Minimum Licensing Standards
Emergency Preparedness (LAC 48:I.9729)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.9729 as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt minimum licensing standards for nursing homes (*Louisiana Register*, Volume 24, Number 1). Act 540 of the 2006 Regular Session of the Louisiana Legislature directed the department, in consultation with the governor's Office of Homeland Security, to adopt provisions governing emergency preparedness requirements for nursing facilities.

In compliance with the directives of Act 540, the Department amended the January 20, 1998 Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 32, Number 12). The department subsequently amended the December 20, 2006 Rule, by Emergency Rule, to further revise and clarify the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 33, Number 6). As result of public hearing comments received, the department has determined that it is necessary to amend the June 10, 2007 Emergency Rule to furnish additional clarification of the emergency preparedness provisions for nursing facilities (*Louisiana Register*, Volume 34, Number 3). The department now proposes to amend the provisions of the March 20, 2008 Emergency Rule to further clarify the emergency preparedness provisions. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of nursing facilities in the event of declared disasters or other emergencies.

Effective July 19, 2008, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing emergency preparedness requirements for nursing facilities.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing
Chapter 97. Nursing Homes
Subchapter B. Organization and General Services
§9729. Emergency Preparedness

A. The nursing facility shall have an emergency preparedness plan which conforms to the current Louisiana Model Nursing Home Emergency Plan and these regulations. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

1. All nursing facilities located in the parishes named in R.S. 40:2009.25(A) shall submit their emergency preparedness information and documentation to the department for review. Upon request, all other nursing facilities shall forward their emergency preparedness information and documentation to the department for review.

a. Emergency preparedness information and documentation shall, at a minimum, include:

i. a copy of the nursing facility's emergency preparedness plan;

ii. updates, amendments, modifications or changes to the nursing facility's emergency preparedness plan;

iii. the current census and number of licensed beds; and

iv. the facility location and current contact information.

2. After reviewing the nursing facility's plan, if the department determines that the plan is not viable or does not promote the health, safety and welfare of nursing facility residents, the facility shall, within 10 days of notification, respond with an acceptable plan of correction to amend its emergency preparedness plan.

B. A nursing facility shall enter current facility information into the Health Standards Section's (HSS) Emergency Preparedness webpage.

1. The following information shall be entered into the HSS Emergency Preparedness webpage before the fifteenth of each month:

a. operational status;

b. census;

c. emergency contact and destination location information; and

d. emergency evacuation transportation needs categorized by the following types:

i. total number needing a coach or bus;

ii. total number needing a para-transit or wheelchair accessible vehicle;

iii. total number needing transportation other than car, coach, bus or wheelchair accessible vehicle, but do not need advanced life support; or

iv. total number needing an advance life support ambulance.

2. A facility shall also enter information within 24 hours of an emergency event. Emergency events include, but are not limited to hurricanes, floods, fires, chemical or biological hazards, power outages, tornados, tropical storms and severe weather.

3. In addition, a facility shall enter updated information requested by the department within 48 hours.

B.4. - 12.i.v. Repealed.

C. The emergency preparedness plan shall be individualized and site specific. All information submitted shall be current and correct. At a minimum, the nursing facility shall have a written emergency preparedness plan that addresses:

1. the procedures and criteria used for determining when the nursing facility will evacuate, including a listing of evacuation determinations;

2. the procedures and criteria used for determining when the nursing facility will shelter in place, including a listing of sheltering in place determinations;

3. a primary sheltering host site(s) and alternative sheltering host site(s) outside the area of risk. These host sites must be verified by written agreements or contracts that have been signed and dated by all parties. These agreements or contracts shall be verified annually;

4. the policies and procedures for mandatory evacuations:

a. if the state, parish, or local Office of Homeland Security and Emergency Preparedness (OHSEP) orders a mandatory evacuation of the parish or area in which the nursing facility is located, the facility shall evacuate unless the facility receives a written exemption from the ordering authority prior to the mandated evacuation;

5. the monitoring of weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials:

a. this monitoring plan shall identify who will perform the monitoring, what equipment will be used for monitoring, and who should be contacted if needed;

6. the delivery of essential care and services to residents, whether the residents are housed in the nursing facility, at an off-site location, or when additional residents are housed in the nursing facility during an emergency;

7. the provisions for the management of staff, including provisions for adequate, qualified staff as well as for distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;

8. an executable plan for coordinating transportation services that are adequate for the resident census and staff. The vehicles required for evacuating residents to another location shall be air-conditioned when available. The plan shall include the following information:

a. a triage system to identify residents who require specialized transportation and medical needs including the number of residents who need:

i. an ambulance for advanced life support;

ii. an ambulance for basic life support;

iii. a wheelchair accessible or para-transit vehicle; and/or

iv. a van, coach or bus;

b. a written transportation contract(s) for evacuation of residents and staff to a safe location outside the area of risk that is signed and dated by all parties. Vehicles that are owned by or at the disposal of the facility must have a written usage agreement that is signed, dated and includes verification of ownership;

NOTE: A copy of a vehicle's title or registration will be sufficient for verification of ownership.

c. The transportation contract and the written usage plans shall include:

i. the number and type of vehicles included in the contract;

ii. the capacity of each vehicle included in the contract; and

iii. a statement of whether each vehicle is air conditioned; and

d. plans to prevent and treat heat related medical illnesses due to the failure of or the lack of air conditioning during transport;

9. the procedures to notify the resident's family or responsible representative of the facility's intent to either shelter in place or evacuate. The facility shall have a designee(s) who will be responsible for this notification. If the facility evacuates, notification shall include:

a. the date and approximate time that the facility is evacuating;

b. the place or location to which the nursing facility is evacuating, including the:

i. name;

ii. address; and

iii. telephone number; and

c. a telephone number that the family or responsible representative may call for information regarding the facility's evacuation;

NOTE: Notification to the resident’s family or responsible party shall be made as far in advance as possible, but at least within 24 hours of the determination to shelter in place or after evacuation.

10. the procedures or methods that will be used to attach identification to the nursing facility resident. The facility shall designate a staff person to be responsible for this identification procedure. This identification shall remain attached to the resident during all phases of an evacuation and shall include the following minimum information:

a. current and active diagnosis;

b. medications, including dosage and times administered;

c. allergies;

d. special dietary needs or restrictions; and

e. next of kin, including contact information;

11. the procedures for ensuring that an adequate supply of the following items accompany residents on buses or other transportation during all phases of evacuation:

a. water;

b. food;

c. nutritional supplies and supplements;

d. medication; and

e. other necessary supplies.

NOTE: The facility shall designate a staff person to be responsible for ensuring that essential supplies are available during all phases of the evacuation.

12. the procedures for ensuring that all residents have access to licensed nursing staff and that appropriate nursing services are provided during all phases of the evacuation:

a. for buses transporting 15 or more residents, licensed nursing staff shall accompany the residents on the bus:

i. a licensed therapist(s) may substitute for licensed nursing staff;

13. staffing patterns for sheltering in place and for evacuation, including contact information for such staff;

14. a plan for sheltering in place if the nursing facility determines that sheltering in place is appropriate:

NOTE: A nursing facility shall be considered sheltering in place if the facility elects to stay in place rather than evacuate when an executive order or proclamation of emergency or disaster is issued for the parish in which the facility is located pursuant to R.S. 29:724.

a. if the nursing facility shelters in place, the facility's plan shall ensure that seven days of necessary supplies are on hand or have written agreements, including timelines, to have supplies delivered prior to the emergency event. Supplies should include, but are not limited to:

i. drinking water or fluids, a minimum of 1 gallon per day per person sheltering at the facility;

ii. water for sanitation;

iii. non-perishable food, including special diets;

iv. medications;

v. medical supplies;

vi. personal hygiene supplies; and

vii. sanitary supplies;

b. If the nursing facility shelters in place, the facility's plan shall provide for a posted communications plan for contacting emergency services and monitoring emergency broadcasts. The facility shall designate a staff person to be responsible for this function. The communication plan shall include:

i. the type of equipment to be used;

ii. back-up equipment to be used if available;

iii. the equipment's testing schedule; and

iv. the power supply for the equipment being used;

c. the facility's plan must include a statement indicating whether the facility has a generator for sheltering in place. If the facility has such a generator, the plan shall provide for a seven day supply of fuel, either on hand or delivered prior to the emergency event. If the facility has such a generator, the plan shall provide a list of the generator's capabilities including:

i. its ability to provide cooling or heating for all or designated areas in the facility;

ii. the ability to power an OPH approved sewerage system;

iii. the ability to power an OPH approved water system;

iv. the ability to power medical equipment;

v. the ability to power refrigeration;

vi. the ability to power lights; and

vii. the ability to power communications;

d. an assessment of the integrity of the facility's building to include, but not be limited to:

i. wind load or ability to withstand wind;

ii. flood zone and flood plain information;

iii. power failure;

iv. age of building and type of construction; and

v. determinations of, and locations of interior safe zones;

e. plans for preventing and treating heat related medical illnesses due to the failure of or the lack of air conditioning while sheltering in place; and

f. the facility's plan must include instructions to notify OHSEP and DHH of the facility's plan to shelter in place;

15. those nursing facilities that are subject to the provisions of R.S. 40:2009.25(A) shall perform a risk assessment to determine the facility's integrity. The integrity of the facility and all relevant and available information shall be used in determining whether sheltering in place is appropriate. All elevations shall be given in reference to sea level or adjacent grade as appropriate. The assessment shall be reviewed and updated annually. The risk assessment shall include the facility's determinations and the following documentation:

a. the facility's latitude and longitude;

b. flood zone determination for the facility and base flood elevation, if available:

i. the facility shall evaluate how these factors will affect the building;

c. elevations of the building(s), Heating Ventilation and Air Conditioning (HVAC) system(s), generator(s), fuel storage, electrical service, water system and sewer motor, if applicable:

i. the facility shall evaluate how these factors will affect the facility considering projected flood and surge water depths;

d. an evaluation of the building to determine its ability to withstand wind and flood hazards to include:

i. the construction type and age;

ii. roof type and wind load;

iii. windows, shutters and wind load;

iv. wind load of shelter building;

v. location of interior safe zones;

NOTE: If wind load determinations are not available, the facility shall give the reason.

e. an evaluation of each generator's fuel source(s), including refueling plans, fuel consumption rate and a statement that the output of the generator(s) will meet the electrical load or demand of the required (or designated) emergency equipment;

f. the determinations of an evaluation of surroundings, including lay-down hazards or objects that could fall on the building and hazardous materials, such as:

i. trees;

ii. towers;

iii. storage tanks;

iv. other buildings;
v. pipe lines;
vi. chemical and biological hazards; and
vii. fuels;

g. Sea, Lake and Overland Surge from Hurricanes (SLOSH) Modeling using the Maximum's of the Maximum Envelope of Waters (MOM) for the facility's specific location and the findings for all categories of hurricanes. The model will be done using both mean and high tides. The facility's plan must include an evaluation of how this will or will not affect the facility;

16. the facility's plan shall provide for an evaluation of security risks and corresponding security precautions that will be taken for protecting residents, staff and supplies during and after an emergency event;

17. the facility's plan shall include clearly labeled and legible floor plan(s) of the nursing facility's building(s). The facility's plan shall include the following:

a. the areas being used as shelter or safe zones;
b. the supply and emergency supply storage areas;
c. the emergency power outlets;
d. the communications center;
e. the location of the posted emergency plan:
i. the posted location must be easily accessible to staff; and
f. a pre-designated command post.

D. Emergency Plan Activation, Review and Summary

1. The nursing facility's shelter in place and evacuation plan(s) shall be activated at least annually, either in response to an emergency or in a planned drill. The facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if a need is indicated by the nursing facility's performance during the emergency event or the planned drill.

2. Nursing facilities subject to the provisions of R.S. 40:2009.25(B) shall submit a summary of the updated plan to the department's nursing facility emergency preparedness manager by March 1 of each year. If changes are made during the year, a summary of the amended plan shall be submitted within 30 days of the modification. All agreements and contracts must be verified by all parties annually and submitted.

E. The nursing facility's plan shall be submitted to the parish or local OHSEP annually. Any recommendations by the parish or local OHSEP regarding the nursing facility's plan shall be documented and addressed by the facility.

1. For nursing facilities listed in the R.S. 40:2009.25(A), the following requirements must be met.

a. The nursing facility's plan shall include verification of its submission to the parish or local OHSEP.

b. A copy of any and all response(s) by the nursing facility to the local or parish OHSEP recommendations shall be forwarded to DHH nursing home preparedness manager.

F. The plan shall be available to representatives of the Office of the State Fire Marshal and the Office of Public Health.

F.1. - 2. Repealed.

G. The facility's plan shall follow all applicable laws, standards, rules or regulations.

G.1. - 2c. Repealed.

H. Evacuation, Temporary Relocation or Temporary Cessation

1. The following applies to any nursing facility that evacuates, temporarily relocates or temporarily ceases operation at its licensed location an emergency event.

a. The nursing facility must immediately give written notice to the Health Standards Section by hand delivery, facsimile or email of the following information:

i. the date and approximate time of the evacuation;

ii. the sheltering host site(s) to which the nursing facility is evacuating; and

iii. a list of residents being evacuated, which shall indicate the evacuation site for each resident.

b. Within 48 hours, the nursing facility must notify the Health Standards Section of any deviations from the intended sheltering host site(s) and must provide the Health Standards Section with a list of all residents and their locations.

c. If there was no damage to the licensed location due to the emergency event and there was no power outage of more than 48 hours at the licensed location due to the emergency event, the nursing facility may reopen at its licensed location and shall notify DHH Health Standards within 24 hours of reopening. For all other evacuations, temporary relocations, or temporary cessation of operations due to an emergency event, a nursing facility must submit to health Standards a written request to reopen, prior to reopening at the licensed location. That request shall include:

i. damage report;
ii. extent and duration of any power outages;
iii. re-entry census;
iv. staffing availability;
v. access to emergency or hospital services; and
vi. availability and/or access to food, water, medications and supplies.

d. - e. Repealed.

2. Upon receipt of a reopening request, the department shall review and determine if reopening will be approved. The department may request additional information from the nursing facility as necessary to make determinations regarding reopening.

3. After review of all documentation, the department shall issue a notice of one of the following determinations:

a. approval of reopening without survey;

b. surveys required before approval to reopen will be granted. Surveys may include OPH, Fire Marshall and Health Standards; or

c. denial of reopening.

4. The purpose of these surveys referenced in Paragraph G.5 above is to assure that the facility is in compliance with the licensing standards including, but not limited to, the structural soundness of the building, the sanitation code, staffing requirements and the execution of emergency plans.

a. The Health Standards Section, in coordination with state and parish OHSEP, will determine the facility's access to the community service infrastructure, such as

hospitals, transportation, physicians, professional services and necessary supplies.

b. The Health Standards Section will give priority to reopening surveys.

5. Upon request by the department, the nursing facility shall submit a written summary attesting how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of all injuries and deaths of residents that occurred during execution of the plan, evacuation and temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

I. Sheltering in Place. If a nursing facility shelters in place at its licensed location during an emergency event, the following will apply:

1. Upon request by the department, the nursing facility shall submit a written summary attesting how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

2. Repealed.

J. Unlicensed Sheltering Sites

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operations at its licensed location due to an emergency event, the nursing facility shall be allowed to remain at an unlicensed sheltering site for a maximum of five days. A nursing facility may request one extension, not to exceed 15 days, to remain at the unlicensed sheltering site.

a. The request shall be submitted in writing to the Health Standards Section and shall be based upon information that the nursing facility's residents will return to its licensed location, or be placed in alternate licensed nursing home beds within the extension period requested.

b. The extension shall only be granted for good cause shown and for circumstances beyond the control of the nursing facility.

c. This extension shall be granted only if essential care and services to residents are ensured at the current sheltering facility.

2. Upon expiration of the five days or upon expiration of the written extension granted to the nursing facility, all residents shall be relocated to a licensed nursing facility and the Health Standards Section and OHSEP shall be informed of the residents' new location(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:49 (January 1998), amended LR 32:2261 (December 2006), LR 33:978 (June 2007), LR 34:

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, 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 copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine
Secretary

0806#057

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections
State Uniform Construction Code Council

Louisiana State Uniform Construction Code
(LAC 55:VI.301)

The Louisiana Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council hereby adopts the following Emergency Rule governing the implementation of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.21 et seq. This Rule is being adopted in accordance with the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. This Emergency Rule becomes effective on the date of the signature by the authorized representative of the Louisiana State Uniform Construction Council (LSUCCC) and shall remain in effect for the maximum period allowed by the APA, which is 120 days.

As a result of the widespread damage caused by Hurricanes Rita and Katrina, the Legislature enacted and mandated a state uniform construction code to promote public safety and building integrity. This new code went into effect statewide on January 1, 2007. R.S. 1730.28 provides for the codes that are mandatory for adoption. However, these codes do not provide for mechanical code enforcement for one and two family residential structures. Therefore, there is currently no code in place for mechanical code enforcement for one and two family residential structures. The LSUCCC has received many calls form building code enforcement officers and third party providers throughout the state inquiring about the application of the International Mechanical Code to one and two family residential structures since the International Mechanical Code applies to commercial structures only. On May 20, 2008, the International Code Council made available a new code enforcement book entitled The Louisiana One- and Two-Family Supplement to the 2006 International Mechanical Code. Immediately adopting this Rule will greatly improve the facilitation of the intent of Act 12 in providing a manual covering mechanical code enforcement for one and two family residential structures.

Title 55
PUBLIC SAFETY AND CORRECTIONS
Part VI. Uniform Construction Code
Chapter 3. Adoption of the Louisiana State Uniform Construction Code
§301. Louisiana State Uniform Construction Code.

A. - A.3.b.i.(b). ...

4. International Mechanical Code, 2006 Edition, and the standards referenced in that code for regulation of construction within this state. Also included for regulation, the Louisiana One- and Two- Family Supplement to the 2006 International Mechanical Code. Furthermore, the International Mechanical Code, 2006 Edition, Chapter 1, Section 101.2 Scope is amended as follows: Exception: Detached one- and two- family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the Louisiana One- and Two- Family Supplement to the 2006 International Mechanical Code.

5. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34: 883 (May 2008), LR 34:

Paeton L. Burkett
Attorney

0806#003

DECLARATION OF EMERGENCY

Department of Revenue
Office of Alcohol and Tobacco Control

Prohibitions of Certain Unfair Business Practices
(LAC 55:VII.317)

Under the authority of R.S. 26:793, and in accordance with R.S. 49:953(B), the Department of Revenue, Office of Alcohol and Tobacco Control adopts LAC 55:VII.317 in regard to limits on coupon and/or rebate offers. Failure to adopt this amendment invites engagement in unfair business practice, thereby threatening the integrity of the system of alcoholic beverage distribution in this state and, in some cases, encourages overconsumption thereof. Overconsumption of alcoholic beverages endangers the health, safety and/or welfare of the citizens.

This Emergency Rule is effective upon publication in the *Louisiana Register* on June 20, 2008.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Chapter 3. Liquor Credit Regulations
§317. Regulation IX—Prohibition of Certain Unfair Business Practices

A. - B.5 ...

C. Marketing and Sale of Alcoholic Beverages in Louisiana

1. ...

2. Exceptions

a. - j.iii. ...

k. Coupons and Rebates. Alcoholic Beverages of High Alcoholic Content, Excluding Malt Beverages. Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaign of alcoholic beverages of high alcoholic content, excluding malt beverages, are allowed in accordance with the following restrictions.

i. Any coupon or rebate offer, promotion, or marketing campaign must be redeemable directly by the manufacturer or a third-party, including but not limited to, a clearinghouse retained by the manufacturer at its sole expense.

ii. No retailer can be required to participate in any offer, promotion, or marketing campaign.

iii. No retailer can be required to bear any of the costs associated with any offer, promotion, or marketing campaign.

iv. No one under the legal drinking age during the time of the offer, promotion or marketing campaign may participate in any offer, promotion, or marketing campaign.

v. All coupon or rebate offers, promotions, and marketing campaigns must be for a specified time not to exceed 90 days from the first date on which such offers may be redeemable.

vi. No coupon or rebate offer, promotion, or marketing campaign may result in any sale of alcoholic beverages for a price of less than six percent above the invoice cost.

l. Coupons and Rebates. Malt Beverages of Not More than or More than 6 Percent Alcohol by Volume. Except as otherwise provided by law, coupon and rebate offers, promotions or marketing campaigns of malt beverages of not more than or more than 6 percent alcohol by volume are allowed with the following restrictions.

i. Instantly Redeemable Coupons ("IRCs") shall be prohibited. Coupons and rebates shall only be redeemable by mail.

ii. When marketing more than one product, "cross-merchandising" or "cross-promotion," mail-in rebates ("MIRs") shall only be redeemable upon the providing of proof of purchase of all products involved in the coupon or rebate marketing, "cross-merchandising" or "cross-promotion" offer.

iii. Coupon and rebate values shall be equal to or less than the following:

(a). packages containing no less than 6 and no more than 11 single units, $1;

(b). packages containing no less that 12 and no more than 17 single units, $2;

(c). packages containing no less that 18 and no more than 23 single units, $3;

(d). packages containing no less that 24 or more single units, $4.

iv. Wholesale or retail dealers of malt beverages shall not incur any cost in connection with any coupon or rebate offers, promotions or marketing campaigns.

m. Enhancers, as defined in this Chapter, may be used as part of a contest, offer, promotion, sweepstakes, or advertising or marketing campaign.

i. Items may include ice chests, grills, rafts, and other items not to exceed $155 in value.

ii. Industry members utilizing enhancers must provide either entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where entries may be accepted, and post the date of the official prize drawing.

n. Sweepstakes. Sweepstakes, as defined in this Chapter, may be used as part of a contest, promotion, or advertising or marketing campaign with the following restrictions:

i. Enhancers that exceed $155 in value, such as four-wheel all-terrain vehicles, trips, etc., may be utilized as part of a sweepstakes.

ii. Industry members and wholesalers must offer the opportunity to participate in any sweepstakes conducted to the entire retail base which the participating wholesalers serve.

iii. Participation by retailers must be voluntary.

iv. Enhancers cannot be displayed within any retail outlet.

v. Photographs or models of enhancers may only be displayed, provided the photographs or models do not exceed $155 in value.

vi. Industry members conducting sweepstakes must provide entry forms and a drop box in which all entries must be placed, a mailing address to which entries may be sent, or an Internet or other electronic address where electronic entries may be accepted, and post a date on which the official prize drawing will occur.

vii. Industry members are prohibited from purchasing enhancers from any retail outlet participating in the display or sweepstakes.

viii. Retail owners, industry members, and their employees and family members are not eligible to participate in any display or sweepstakes drawing allowed under provisions of this Section.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:793.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Alcoholic Beverage Control, LR 4:463 (November 1978), amended LR 5:11 (January 1979), amended by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 17:607 (June 1991), LR 20:671 (June 1994), amended by the Department of Revenue and Taxation, Office of Alcoholic Beverage Control, LR 22:116 (February 1996), LR 26:2631 (November 2000), LR 28:1484 (June 2002), LR 31:1344 (June 2005), LR 34:

Murphy J. Painter
Commissioner

0806#058

DECLARATION OF EMERGENCY

Department of Revenue
Policy Services Division

Lessors of Motor Vehicles—Electronic Filing Requirement
(LAC 61:III.1511)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules, and R.S. 47:1511, which allows the department to make reasonable rules and regulations, the Secretary of Revenue hereby finds that immediate action is required to develop a means for the collection of sales tax data related specifically to motor vehicle leasing and renting transactions. Without the immediate implementation of the return filing system required by this Rule, imminent peril to the public welfare will exist.

This Emergency Rule will require that rentors and lessors of motor vehicles electronically submit sales tax returns to the Louisiana Department of Revenue on which their revenues from motor vehicle leasing and renting, deductions, and tax collections pertaining thereto, are distinguishable on the electronic returns from revenues, deductions, and tax collections related to other sales taxable transactions of the dealers.

R.S. 47:1520(A) authorizes the secretary to mandate electronic filing of tax returns and reports under certain circumstances, including when the report is required for dedicated fund distribution. R.S. 47:1520(A)(2) provides that the electronic filing requirement be implemented by administrative rule. R.S. 47:1520(B) contains penalty provisions for dealers' failure to comply.

Acts 2008 2nd Ex. Sess., No. 11 enacted R.S. 48:77(A) to dedicate percentages of the sales tax collections from motor vehicle leases and rentals to the Transportation Trust Fund beginning July 1, 2008. This information is not separately reported on the sales tax return and there is no space to add the lines to the current tax return. Mandated electronic filing for motor vehicle leasing and renting dealers was selected because it is the most cost-effective means to obtain the required sales tax data.

In order to acquire the needed data on a timely basis, the department adopts the following Emergency Rule. This Emergency Rule shall be effective June 1, 2008, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

Title 61
REVENUE AND TAXATION
Part III. Administrative Provisions and Miscellaneous
Chapter 15. Electronic Filing and Payments
§1511. Lessors of Motor Vehicles—Electronic Filing Requirement

A. Definitions

Motor Vehicle—any self-propelled device used to transport people or property on the public highways.

B. R.S. 48:77 dedicates a percentage of the sales tax collections from the motor vehicle leases and rentals to the Transportation Trust Fund effective July 1, 2008.

C. Beginning with the July 2008 filing period, dealers who collect sales tax on motor vehicle leases and rentals are required to file their sales tax returns electronically with the Department of Revenue using the electronic format prescribed by the department.

1. The electronic sales tax return will provide for the separate reporting of the sales tax collected on motor vehicle leases and rentals.

2. The electronic sales tax return will provide for separate reporting of exempt motor vehicle leases and rentals.

D. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of $100 or 5 percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds $25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, and 48:77.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 34:

Cynthia Bridges
Secretary

0806#006

DECLARATION OF EMERGENCY

Department of Revenue
Policy Services Division

Wind or Solar Energy Systems Tax Credits
(LAC: 61:I.1907)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, the Secretary of the Department of Revenue hereby adopts Emergency Rule LAC 61:I.1907 pertaining to the administration of the wind or solar energy system income tax credits allowed by R.S. 47:6030. This Emergency Rule shall be effective June 20, 2008, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1907. Income Tax Credits for Wind or Solar Energy Systems

A. Revised Statute 47:6030 provides an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana homeowner or the owner of a residential rental apartment project located in the state. In order for costs associated with the purchase and installation of a wind or solar energy system to qualify for this credit, the expenditure must be made on or after January 1, 2008. The amount of the credit is equal to 50 percent of the first $25,000 of the cost of each wind or solar energy system.

B. Definitions

Charge Controller—an apparatus designed to control the state of charge of a bank of batteries.

Grid-Connected, Net Metering System—a wind or solar electric system interconnected with the utility grid in which the customer only pays the utility for the net energy used from the utility minus the energy fed into the grid by the customer. All interconnections must be in accordance with the capacity, safety and performance interconnection standards adopted as part of the Louisiana Public Service Commission's, the New Orleans City Council's, or other Louisiana utility regulatory entities, as appropriate, established net metering rules and procedures.

Inverter—an apparatus designed to convert direct current (DC) electrical current to alternating current (AC) electrical energy. Modern inverters also perform a variety of safety and power conditioning functions that allow them to safely interconnect with the electrical grid.

Photovoltaic Panel—a panel consisting of a collection of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

Residence—a single family dwelling, one dwelling unit of a multi-family owner occupied complex, or one residential dwelling unit of a rental apartment complex. All eligible residences must be located in Louisiana.

Solar Electric System—a system consisting of photovoltaic panels with the primary purpose of converting sunlight to electrical energy and all equipment and apparatus necessary to connect, store and process the electrical energy for connection to and use by an electrical load.

Solar Thermal System—a system consisting of a solar energy collector with the primary purpose of converting sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling.

Supplemental Heating Equipment—a device or apparatus installed in a solar thermal system that utilizes energy sources other than wind or sunlight to add heat to the

system, with the exception of factory installed auxiliary heat strips that are an integral component of a specifically engineered solar hot water storage tank.

Wind Energy System—a system of apparatus and equipment with the primary purpose of intercepting and converting wind energy into mechanical or electrical energy and transferring this form of energy by a separate apparatus to the point of use or storage.

C. Household Eligibility for Wind and/or Solar Energy Systems Tax Credits

1. Each residence or apartment project in the state is eligible for tax credits for the number of separate complete wind, solar electric, and solar thermal energy systems necessary to ensure that the residence or apartment project is supplied with all of its energy needs.

2. The credit for the purchase and installation of a wind energy system or solar energy system by a resident individual at his residence shall be claimed by the resident individual on his Louisiana individual income tax return.

3. The credit for the purchase and installation of a wind energy system or solar energy system by the owner of a residential rental apartment project shall be claimed by the owner on his Louisiana individual, corporate or fiduciary income tax return.

4. All wind or solar energy systems must be installed in the immediate vicinity of the residence or apartment project claiming the credit such that the electrical, mechanical or thermal energy is delivered directly to the residence or apartment project.

5. In order to claim a tax credit(s) for a wind energy system, solar electric energy system, or solar thermal energy system the components for each system must be purchased and installed at the same time as a system. Eligible components of systems are defined in Paragraphs D.2 through D.4 below.

D. Wind and Solar Energy Systems Eligible for the Tax Credit

1. The credit provided by R.S. 47:6030 is only allowed for complete and functioning wind energy systems or solar energy systems. Local and state taxes are an eligible system cost.

a. Exception to General Rule Allowing Credit Only for Complete Systems

i. In order to be eligible to receive the credit, the owner of a single unit in a multi-family residence project must have an undivided interest in the wind or solar energy system that is being installed.

ii. If a component of a wind or solar energy system is shared, documentation must be supplied dividing up the costs of the component between all those eligible for the credit.

iii. Subsequent purchasers of units in the multi-family residence not in possession of an undivided interest at the time of installation, will not be eligible for the credit.

2. Wind Energy Systems. Eligible wind energy systems under the tax credit include systems designed to produce electrical energy and systems designed to produce mechanical energy through blades, sails, or turbines and may include the following.

System Type	Eligible System Components
DC Wind Electric Generation Systems	DC output wind turbine, controllers, towers and supports, charge controllers, inverters, batteries, battery boxes, DC and AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
AC Wind Electric Generation Systems	AC output wind turbine, controllers, towers and supports, charge controllers, power conditioners/grid interconnection devices, batteries, battery boxes, AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
Mechanical Wind Systems	mechanical output wind turbine, towers and supports, mechanical interconnection between turbine and mechanical load

3. Solar Electric Systems. Eligible solar electric systems under the tax credit include grid-connected net metering systems, grid-connect net metering systems with battery backup, stand alone alternating current (AC) systems and stand alone direct current (DC) systems, designed to produce electrical energy and may include the following.

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems	Photovoltaic panels, mounting systems, inverters, AC and DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Grid-Connected, Net Metering Solar Electric Systems with Battery Backup	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC and DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric AC Systems	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC and DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric DC Systems	Photovoltaic panels, mounting systems, charge controllers, batteries, battery cases, DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

4. Solar Thermal Systems. Solar thermal systems eligible under the tax credit include systems designed to produce domestic hot water, systems designed to produce thermal energy for use in heating and cooling systems and solar pool heating systems and may include the following.

System Type	Eligible System Components
Domestic Solar Hot Water Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Heating and Cooling Thermal Energy Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Solar Pool Heating System	Solar pool heating collectors, mounting systems and devices, controllers, actuators, valves, pool covers, air elimination devices, sensors, piping and other related materials from solar pool heating collectors to interconnection with pool filtration system

5. All wind and solar energy systems for which a tax credit is claimed shall include an operations and maintenance manual containing a working diagram of the system, explanations of the operations and functions of the component parts of the system and general maintenance procedures.

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be UL listed and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

7. All solar thermal apparatus claiming the tax credit must be certified by the Solar Rating and Certification Corporation (SRCC) and installed in compliance with manufacturer specifications and all applicable building and plumbing codes.

8. Applicants applying for the tax credit on any system(s) must provide proof of purchase to the Louisiana Department of Revenue detailing the following as applicable to your particular solar or wind energy system installation:

a. type of system applying for the tax credit;

b. output capacity of the system:

i. solar electric systems—total nameplate listed kW of all installed panels;

ii. solar thermal systems—listed SRCC annual BTU or equivalent kWh output;

iii. wind electric systems—total rated kW of all alternators and generators;

iv. wind mechanical systems—shaft horsepower as rated by manufacturer, licensed contractor or licensed professional engineer;

c. physical address where the system is installed in the state;

d. total cost of the system as applied towards the tax credit separated by:

i. equipment costs;

ii. installation costs;

iii. taxes;

e. make, model, and serial number of generators, alternators, turbines, photovoltaic panels, inverters, and solar thermal collectors applied for in the tax credit;

f. name and Louisiana contractor's license number of installer;

g. copy of the modeled array output report using the PV Watts Solar System Performance Calculator developed by the National Renewable Energy Laboratory and available at the website www.nrel.gov/rredc/pvwatts . The analysis must be performed using the default PV Watts de-rate factor;

h. copy of a solar site shading analysis conducted on the installation site using a recognized industry site assessment tool such as a Solar Pathfinder or Solmetric demonstrating the suitability of the site for installation of a solar energy system.

E. Tax Exemption Eligibility of Certain Costs

1. Eligible costs—eligible costs that can be included under the tax credit are reasonable and prudent costs for equipment and installation of the wind and solar energy systems defined in Subsection B and described in Subsection D above. Equipment costs must be in accordance with Subsection D above.

a. All installations must be performed by a contractor duly licensed by and in good standing with the Louisiana State Contractors Licensing Board or the owner of the residence until September 20, 2008, when the provisions of Subparagraph b will come into effect.

b. Three months after the effective date of this Section, all installations must be performed by the contractor duly licensed by and in good standing with the Louisiana Contractors Licensing Board with a classification of Solar Energy Equipment and a certificate of training in the design and installation of solar energy systems from an industry recognized training entity, or a Louisiana technical college, or the owner of the residence.

2. Ineligible costs—labor costs for individuals performing their own installations are not eligible for inclusion under the tax credit. Supplemental heating equipment costs used with solar collectors are not eligible for inclusion under the tax credit.

3. Whenever, in return for the purchase price or as an inducement to make a purchase, marketing rebates or incentives are offered, the eligible cost shall be reduced by the fair market value of the marketing rebate or incentive received. Such marketing rebates or incentives include, but are not limited to, cash rebates, prizes, gift certificates, trips or any other thing of value given by the installer to the customer as an inducement to purchase an eligible wind or solar energy system.

4. Solar or wind energy systems or components for which tax credits are received are not eligible for a second tax credit if resold.

5. Any solar or wind energy system for which a tax credit is received must remain on the structure to which it

was originally attached or on another structure located within Louisiana owned and operated by the individual receiving the credit for a minimum of five years from the date of installation.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 34:

Cynthia Bridges
Secretary

0806#036

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

TANF—Domestic Violence Services and Teen Pregnancy Prevention Progrm (LAC 67:III.5509 and 5575)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend LAC 67:III.5509 Domestic Violence Services and 5575 Teen Pregnancy Prevention Program. This amendment is necessary in order to expand Temporary Assistance for Needy Families (TANF) services by adding programs that address educating and providing training to males age 18 years and older, law enforcement officials, educators, and relevant counseling services concerning statutory rape, a requirement that must be met to remain in compliance with the regulations set forth in Title IV of the Social Security Act, Section 402.

This Emergency Rule, effective June 4, 2008, will remain in effect for a period of 120 days. The authorization for emergency action in this matter is contained in Act 18 of the 2007 Regular Session of the Louisiana Legislature.

Title 67
SOCIAL SERVICES
Part III. Office of Family Support
Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives
Chapter 55. TANF Initiatives

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide services for victims of domestic violence and their children, including rural outreach and community collaboration training for the purpose of educating attendees about domestic violence and the available services provided by the Department of Social Services including but not limited to TANF, Food Stamps, Child Care, and Employment Training. Additionally, these services will include education and training addressing the problem of statutory rape. These programs are designed to not only reach the public, but also law enforcement officials, educators, and relevant counseling services.

B.-E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2099 (November 2006), amended LR 33:2205 (October 2007), LR 34:693 (April 2008), LR 34:

§5575. Teen Pregnancy Prevention Program

A. Effective July 1, 2003, The Office of Family Support shall enter into Memoranda of Understanding or contracts to prevent or reduce out-of-wedlock and teen pregnancies by enrolling individuals 8 through 20 in supervised, safe environments, with adults leading activities according to a research-based model aimed at reducing teen pregnancy. These programs will consist of curriculums which include, but are not limited to, topics designed to educate males 18 years and older on the problem of statutory rape.

B.-D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004), amended LR 34:697 (April 2008), LR 34:

Ann S. Williamson
Secretary

0806#029

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Iatt Lake Fishing Closure (LAC 76:VII.114)

The Inland Fisheries Division of the Department of Wildlife and Fisheries conducts annual vegetative samples on water bodies in late summer, when aquatic vegetation infestations are most severe. Management plans are then written, approved by the department and presented to local citizens. This year's management plan for Iatt Lake in Grant Parish calls for an 8-foot drawdown followed by stocking of triploid grass carp. This will reduce the surface acreage of Iatt Lake by 80 percent and substantially increase the vulnerability of fish to anglers. The department has monitored fish populations in the past following drawdowns. Prior to 2000, drawdowns were conducted without closing the lake to fishing. Population catch statistics indicated reductions in fish populations. We have conducted 3 drawdowns since 2000, and fish catch rates have continually risen over that time period. The department feels it in the best interest of the resource to prohibit fishing while the lake is drawn down to prevent the over-harvest of fish. Poor fish populations in subsequent years would negatively impact the welfare of businesses catering to Iatt Lake fishermen, some individuals living on the lake and the fishermen using the lake.

Traditionally, the department has used late fall/winter drawdowns on Iatt Lake. To better accomplish its management goals, the 2008 drawdown began in May and will probably end in October. The time required to finalize a management plan, coupled with an earlier drawdown date, prevented the department from utilizing only a Notice of Intent and necessitated a Declaration of Emergency.

In accordance with the emergency provisions of R.S. 49:953.B and R.S. 49:967.D of the Administrative Procedure Act, and under the authority of R.S. 56:6(25)(a), R.S.

56:325.C and R.S. 56:326.3, the Wildlife and Fisheries Commission hereby declares:

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 1. Freshwater Sports and Commercial Fishing
§114. Iatt Lake Fishing Closure

A. Recreational and commercial fishing in Iatt Lake in Grant Parish shall be closed while the lake is in drawdown. The following provisions shall apply.

1. The area where the closure shall be in effect are the waters of Iatt Lake between the Iatt Lake spillway and Louisiana Highway 122.

2. The closure shall begin on June 9, 2008 and continue until the Secretary of the Department officially announces the reopening of the lake to fishing. This should occur sometime after October 6, 2008 when the lake reaches pool stage (83 feet MSL), but could occur earlier if rain events prompt the department to abandon the drawdown effort before October 6, 2008.

3. Effective with the closure, no person shall take or possess or attempt to take any species of fish while on the waters of Iatt Lake or take or possess or attempt to take any fish from the waters of Iatt Lake.

4. Throughout this closure, no person shall possess while on the waters of Iatt Lake any fishing gear capable of taking fish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56.6(25)(a), R.S. 56:325.C, and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 34:

Patrick C. Morrow
Chairman

0806#032

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Oyster Cargo Vessels (LAC 76:VII.523)

The oyster fishery in the State of Louisiana is cooperatively managed and regulated by the Louisiana Department of Wildlife and Fisheries, the Wildlife and Fisheries Commission and the Louisiana Department of Health and Hospitals, Office of Public Health Molluscan Shellfish Program with oversight from the U. S. Food and Drug Administration (FDA). The National Shellfish Sanitation Program (NSSP) 2005 Model Ordinance is the federal/state cooperative program recognized by the FDA and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.

In order to comply with FDA requirements, in June of 2008 the Office of Public Health Molluscan Shellfish Program will promulgate additional rules based on the *Vibrio parahaemolyticus* control plan. Under this control plan, shell-stock harvested in Louisiana for raw consumption during the months of May through October must be placed under mechanical refrigeration at an air temperature not to exceed 45 degrees F within five hours from the time harvesting begins. This Rule is to become effective June 24, 2008.

Due to the distances and travel time involved in transporting oysters from many of the private leases and public oyster seed grounds in the remote oyster growing areas of the state, it is difficult to have shell-stock off-loaded at dockside and under refrigeration within five hours. While some larger oyster harvest vessels have the ability to place mechanical refrigeration on board in order to meet the refrigeration requirements, on-board refrigeration is not an option for smaller vessels and is cost prohibitive in some cases.

In order to provide a means of compliance with the five hour refrigeration requirements, the Wildlife and Fisheries Commission anticipates authorization, through pending legislation (HB 1142, Representative St. Germain), to adopt rules for the permitting of oyster cargo vessels. Such permitted vessels will be allowed to accept containerized and tagged molluscan species directly from oyster harvest vessels and placed them under refrigeration on board the permitted cargo vessel or to transport to dockside refrigeration within five hours from the beginning of harvest.

Standard rulemaking processes and delays will not permit final promulgation of this Rule by June 2008; and failure to promulgate this Rule in time for the FDA requirement to take effect will result in imminent peril to public health, the oyster fishery, as well as individual fishermen, who will be unable to comply with the FDA requirement without the mechanism of the oyster cargo vessel. Therefore, it is necessary that this regulation be enacted initially by Declaration of Emergency pending promulgation of a permanent rule.

The process for Wildlife and Fisheries Commission adoption of rules for the permitting of Oyster Cargo Vessels can be expedited under the emergency provisions of the Administrative Procedure Act, R. S. 49:953(B).

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 5. Oysters
§523. Oyster Cargo Vessels

A. Policy. The Oyster Cargo Vessel (OCV) permit is intended to assist oyster harvesters with meeting refrigeration requirements as set forth in the Louisiana Department of Health and Hospitals Shellfish Sanitation Code (Title 51) and to facilitate harvest and transport of shell-stock harvested from Louisiana water bottoms. It is also intended to provide an effective method of regulating the transfer of oysters from harvest vessels to cargo vessels which will land or off-load oysters. Violation of any provision of the rules, regulations or statutes concerning the oyster cargo vessel permit by the permittee, oyster harvester or vessel owner while operating under the OCV permit shall result in suspension and/or revocation of the permit in addition to any citations resulting from activities.

B. Permit Procedures

1. Permits shall be available from the Department of Wildlife and Fisheries (LDWF) licensing office in Baton Rouge at any time during regular business hours. The OCV permit may be purchased at any time of the year for the current license year and from November fifteenth for the

immediately following year, and shall be valid for up to one calendar year beginning January 1 and expiring on December 31 of the same calendar year. The annual fee per permit shall be $250 for residents and $1105 for nonresidents.

2. Permits shall be issued in the name of the vessel owner and shall have the vessel identified on the license.

3. Any designee obtaining the permit on the vessel owners behalf must present to LDWF licensing a signed, notarized document from the vessel owner, which includes the vessel owner's name, address, Social Security number, date of birth and driver's license number, and registration number or USCG document number of the vessel to be permitted, giving permission for the designee to obtain the permit. If the owner of such vessel is a corporation, the Louisiana Secretary of State's charter/organization identification number shall be required and the permission document shall be signed by a registered agent or director of the corporation as identified by the Louisiana Secretary of State's office. Permits shall only be issued to validly licensed vessels.

C. Operations. Permits are non-transferable and only the vessel listed on the permit can be used with the permit and only one vessel is allowed per permit. The vessel must maintain the original permit on board at all times while operating under the permit, including times of fishing and transportation. The permitted vessel shall display signs, visible from either side of the vessel and from the air, with the words "OCV Permit" and the permit number shall be placed on these signs in letters at least 12 inches in height.

1. All vessels operating as Oyster Cargo Vessels under this permit shall be required to meet Louisiana Department of Health and Hospitals Shellfish Sanitation Code requirements.

D. Records, Reporting. The applicant, vessel owner or a designee on board a legally permitted oyster cargo vessel shall only transport oysters taken by the other legally licensed commercial oyster harvesters on behalf of a certified dealer legally licensed in Louisiana and shall be required (on behalf of a certified dealer only) to complete all required records pertaining to oysters at the point oysters are transferred to the receiving vessel. No person shall transfer oysters to any commercial vessel for purposes of refrigeration, sale or transport unless the receiving vessel has an oyster cargo vessel permit as described in R.S. 56:422(E).

E. Landing. All oysters taken from the reefs of this state and transported by a legally permitted oyster cargo vessel must be landed in Louisiana in accordance with R.S. 56:424G(1). No person operating under an oyster cargo vessel permit shall land any oysters taken by another harvester outside the jurisdiction of Louisiana.

F. Tagging. All oysters transferred to an oyster cargo vessel must be properly sacked or containerized and tagged in accordance with the provisions of R.S. 56:449 and must meet all Louisiana Department of Health and Hospital Shellfish Sanitation Administrative Code requirements that relate to the tagging of shellfish prior to being placed on board any oyster cargo vessel.

G. Monitoring. The vessel utilized under this permit shall have on-board and in working order an electronic vessel monitoring system as required by R.S. 56:424, and as provided in LAC 76:VII.371. The owner or operator of any vessel issued an oyster cargo vessel permit, must have an operable vessel monitoring system (VMS) installed on-board that meets the requirements of LAC 76:VII.371. The VMS unit must be certified, installed on board and operable, and the department notified of the installation, before the vessel may begin receiving and transporting oysters.

H. Violation. Failure to abide by any regulation set forth regarding permitted oyster cargo vessels shall be deemed a violation of this Section. All oysters placed on-board from another vessel, possessed, or transported by an oyster vessel in violation shall be considered illegally taken, possessed, or transported. All persons aboard vessels with oysters placed on-board from another vessel without complying with the requirements herein shall be in violation of the oyster cargo vessel regulations. The provisions of this Section do not exempt any person from any other laws, rules, regulations and license requirements for this or other states as they pertain to the transfer or shipment of shellfish. Violations of this Section shall constitute a Class 4 violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:422(E).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 34:

Patrick C. Morrow
Chairman

0806#026

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Red Snapper Recreational Season Closure

The reef fish fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally 3 miles offshore. Rules were promulgated by NMFS on January 29, 2008 to enact provisions of the red snapper rebuilding plan (Reef Fish Amendment 27/Shrimp Amendment 14). These rules included establishing a recreational season of June 1 through September 30 of each year. A compatible season was established for Louisiana waters by the Wildlife and Fisheries Commission at their March 6, 2008 meeting. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

On March 25, 2008 NMFS announced a change in the closing date for the recreational season for the harvest of red snapper in federal waters in the Gulf of Mexico to 12:01 a.m., August 5, 2008. The Regional Administrator of NMFS has requested that Louisiana enact compatible regulations for this fishery.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana water to coincide with the regulation set forth by NMFS, it is necessary that emergency rules be enacted. This Emergency

Rule modifies the seasons set forth in the Emergency Rule passed by the Wildlife and Fisheries Commission at their March 2008 meeting.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby declares:

The recreational red snapper season is established to open on June 1, 2008, and remain open until 12:01 a.m., August 5, 2008. The recreational bag limit for red snapper shall be 2 fish per person per day during this open season. Captain and crew members shall not harvest or possess red snapper while operating as charter vessels and headboats as defined in Federal Regulations 50 CFR Part 622.2. Their bag limit is zero for all of these species.

Patrick C. Morrow
Chairman

0806#027

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Clean Air Interstate Rule
(LAC 33:III.506)(AQ292)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.506 (Log #AQ292).

This revision for the Clean Air Interstate Rule (CAIR) nitrogen oxide (NO_x) trading programs allocation methodology addresses the following issues: updates citations to all federal revisions to the CAIR; revises and adds definitions; provides that allowances for petroleum coke-fired electrical generating units (EGUs) are to be calculated using the same methodology as allowances for coal-fired EGUs; adds a provision for repowered utility units; adds a provision for the reclassification of units from utility to non-utility and vice versa; and adds language to cease allocation of NO_x allowances to certified units that are not built (If the unit does not commence operations by a certain date, then the permit becomes void. Once the permit is void, no additional allocations will be made.). EPA promulgated a CAIR Federal Implementation Plan (FIP) on April 28, 2006, which allows a state to allocate CAIR NO_x allowances in a manner that is different from the FIP. The initial state allocation rule was promulgated on August 20, 2007. Since that time the department has determined that some operating circumstances were inadvertently omitted, and these are included in this revision. In this rulemaking the department is also updating the regulations to include the latest changes to the federal program. This rule is also a revision to the air quality CAIR State Implementation Plan (SIP). The basis and rationale for this rule are to improve air quality through the reduction of intrastate and interstate emissions of NO_x from electrical generating units. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§506. Clean Air Interstate Rule Requirements

A. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO_x) Annual Program. This Subsection is adopted in lieu of 40 CFR 97.141 and 97.142 as promulgated under the CAIR Federal Implementation Plan (FIP) NO_x Annual Trading Program on April 28, 2006, at 71 FR 25328-25469 and as amended on October 19, 2007, at 72 FR 59190-59207. All provisions of 40 CFR Part 97, Subparts AA-HH, continue to apply, with the exception of §97.141 (Timing Requirements for CAIR NO_x Allowance Allocations) and §97.142 (CAIR NO_x Allowance Allocations). The provisions of this Subsection state how the CAIR NO_x annual allowances shall be allocated in accordance with this Section and 40 CFR 97.144(a).

1. Definitions. The terms used in Subsection A of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), except for those terms defined herein.

Certified Unit—an electricity-generating unit that has been certified by the LPSC or approved by a municipal authority but was not in operation on, or approved by, December 31, 2004.

Certified Unit or Contract—Repealed.

* * *

Electric Public Utility—any person furnishing electric service within this state, including any electric cooperative transacting business in this state, provided, however, that the term shall not be construed to apply to any co-generator who consumes any or all of the electric power and energy that it generates or to any independent power producer who sells its entire production of electric power and energy to an *electric public utility* as herein defined.

Fuel Types—for the allocation of allowances under Louisiana's program, *fuel types* include solid, gaseous, or liquid fuel. The following definitions apply to *fuel types*.

i. *Solid Fuel*—includes, but is not limited to, coal and petroleum coke. Any amount of solid fuel that is combusted, alone, in series, or in combination with any other fuel, during any control period shall meet the definition of solid fuel.

ii. *Gaseous Fuel*—includes, but is not limited to, natural gas, propane, coal gas, and blast furnace gas. Any mixture containing at least 50 percent of gaseous fuel that is combusted with any liquid fuel during any control period shall meet the definition of gaseous fuel.

iii. *Liquid Fuel*—includes, but is not limited to, petroleum-based oils and glycerol.

* * *

LPSC or Municipal Certification—the process under which the LPSC certifies, or the relevant municipal authority approves, construction, conversion, or repowering of an electricity-generating unit as being in the public convenience and necessity. This process includes the certification or approval of long-term contracts that dedicate a portion of the electrical output of any generation facility to a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

* * *

Utility Unit—a certified unit that is in operation, a previously-operational certified unit, a non-utility unit purchased by an electric public utility, or a non-utility unit that has an effective and active long-term contract with a utility unit. Long-term contracts are those contracts of at

least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

2. - 2.a.…

b. Certified Units. A certified and permitted unit subject to CAIR shall be allocated NO_x allowances for the control period in which the unit will begin operation, and for each successive control period, for which no NO_x allowances have been previously allocated until operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three calendar years of operating data immediately preceding the allocation submittal deadline, the converted heat input as calculated in Clause A.2.b.i or ii of this Section shall be used to allocate allowances for the unit. The certified unit shall be treated as a utility unit for the purposes of this allocation, except that converted heat input shall be used instead of adjusted heat input. Repowered utility units will be allocated in the same manner as certified units in the control period of certification. Converted heat input is calculated as follows.

i. For a solid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

ii. For a gaseous or liquid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

c. Utility Units. The department shall allocate CAIR NO_x allowances to each CAIR utility unit by multiplying the CAIR NO_x budget for Louisiana (40 CFR 97.140), minus the allowances allocated under Subparagraph A.2.a of this Section, by the ratio of the adjusted heat input of the CAIR utility unit to the total amount of adjusted heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The adjusted heat input (in MMBTU) used with respect to the CAIR NO_x annual allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period adjusted heat input for calendar years 2002, 2003, and 2004), with the control period adjusted heat input for each year calculated as follows.

(a). If the unit is solid fuel-fired during a year, the unit's control period heat input for that year shall be multiplied by 100 percent.

(b). If the unit is liquid fuel-fired during a year, the unit's control period heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause A.2.c.i.(a) or (b) of this Section, the unit's control period heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period heat input, fuel type, and total tons of NO_x emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

3. - 3.b.…

4. Reclassification of Units. When the ownership of a unit is transferred, the unit is reclassified accordingly as a utility or non-utility unit. The department will allocate future allowances using the new classification, beginning with the allocation submission deadline after the effective date of the unit reclassification. The electric public utility must notify the department of the transfer of ownership. No changes will be made without written notification from the electric public utility.

B. Clean Air Interstate Rule (CAIR) Nitrogen Oxide (NO_x) Ozone Season Program. This Subsection is adopted in lieu of 40 CFR 97.341 and 97.342 as promulgated under the CAIR Federal Implementation Plan (FIP) NO_x Ozone Season Trading Program on April 28, 2006, at 71 FR 25328-25469 and as amended on October 19, 2007, at 72 FR 59190-59207. All provisions of 40 CFR Part 97, Subparts AAAA–HHHH, continue to apply, with the exception of §97.341 (Timing Requirements for CAIR NO_x Ozone Season Allowance Allocations) and §97.342 (CAIR NO_x Ozone Season Allowance Allocations). The provisions of this Subsection state how the CAIR NO_x ozone season allowances shall be allocated in accordance with this Section and 40 CFR 97.343(a).

1. - 2.a.…

b. Certified Units. A certified and permitted unit subject to CAIR shall be allocated NO_x allowances for the ozone season of the control period in which the unit will begin operation, and for each successive ozone season in a control period, for which no NO_x allowances have been previously allocated until ozone season operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three years of ozone season operating data preceding the allocation submittal deadline, the converted heat input as calculated in Clause B.2.b.i or ii of this Section shall be used to allocate ozone season allowances for the unit. The certified unit shall be treated as a utility unit for purposes of this allocation, except that ozone season converted heat input shall be used instead of ozone season adjusted heat input. Repowered utility units will be allocated in the same manner as certified units in the control period of certification. Ozone season converted heat input is calculated as follows.

i. For a solid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the

generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. If the control period gross electrical output is unavailable, the hourly heat input for a specified calendar year shall equal the annual gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU, and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.

ii. For a gaseous or liquid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. If the control period gross electrical output is unavailable, the hourly heat input for a specified calendar year shall equal the annual gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU, and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.

c. Utility Units. The department shall allocate CAIR NO_x ozone season allowances to each CAIR utility unit by multiplying the CAIR NO_x ozone season budget for Louisiana (40 CFR 97.340), minus the allowances allocated under Subparagraph B.2.a of this Section, by the ratio of the ozone season adjusted heat input of the CAIR utility unit to the total amount of ozone season adjusted heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The ozone season adjusted heat input (in MMBTU) used with respect to the CAIR NO_x ozone season allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period ozone season adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period ozone season adjusted heat input for calendar years 2002, 2003, and 2004), with the control period ozone season adjusted heat input for each year calculated as follows.

(a). If the unit is solid fuel-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 100 percent.

(b). If the unit is liquid fuel-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause B.2.c.i.(a) or (b) of this Section, the unit's control period ozone season heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period ozone season heat input, fuel type, and total tons of NO_x ozone season emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

3. - 3.b.…

4. Reclassification of Units. When the ownership of a unit is transferred, the unit is reclassified accordingly as a utility or non-utility unit. The department will allocate future allowances using the new classification, beginning with the allocation submission deadline after the effective date of the unit reclassification. The electric public utility must notify the department of the transfer of ownership. No changes will be made without written notification from the electric public utility.

C. Annual Sulfur Dioxide. Except as specified in this Section, the Federal SO_2 Model Rule, published in the *Code of Federal Regulations* at 40 CFR Part 96, July 1, 2007, and as revised at 72 FR 59190-59207, October 19, 2007, is hereby incorporated by reference, except for Subpart III–CAIR SO_2 Opt-in Units and all references to opt-in units.

D. - E. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007), LR 34:978 (June 2008)

Herman Robinson, CPM
Executive Counsel

0806#019

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Incorporation by Reference—2007
(LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517)(MM007ft)

Editor's Note: This Rule is being reprinted to correct a citation error. The Rule may be viewed in its entirety on pages 865-867 in the May 20, 2008 *Louisiana Register*.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Environmental Quality regulations, LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517 (Log #MM007ft).

This Rule is identical to federal regulations found in 10 CFR Part 71, Appendix A, January 1, 2007; 40 CFR 117.3, Part 136, Part 266, Appendices I-IX and XI-XIII, 302.4, 302.6(e), 355.40(a)(2)(vii), Part 401, Parts 405-415, and Parts 417-471, July 1, 2007; and 72 FR 40245-40250, July

24, 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 Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference into LAC 33:I, V, IX, and XV the corresponding federal reportable quantity list of hazardous substances in 40 CFR 117.3 and 302.4, July 1, 2007; administrative reporting exemptions for certain air releases of NOx in 40 CFR 302.6(e) and 355.40(a)(2)(vii), July 1, 2007; hazardous waste regulations in 40 CFR Part 266, Appendices I-IX and XI-XIII, July 1, 2007; National Pollutant Discharge Elimination System regulations in 40 CFR Parts 136, 401, 405-415, and 417-471, July 1, 2007; radiation regulations in 10 CFR Part 71, Appendix A, January 1, 2007; and amendments to the Concentrated Animal Feeding Operations (CAFO) Point Source Category Regulations (40 CFR Part 412) at 72 FR 40245-40250, July 24, 2007. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc., granted to Louisiana by EPA. This incorporation by reference package has been amended to keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this Rule are to mirror the federal regulations in order to maintain equivalency. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 2. Notification
Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges
Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges
§3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations

1. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

a. 40 CFR 117.3, July 1, 2007, Table 117.3—Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

b. 40 CFR 302.4, July 1, 2007, Table 302.4—List of Hazardous Substances and Reportable Quantities.

2. Notification Requirements. The following administrative reporting exemptions are hereby incorporated by reference:

a. 40 CFR 302.6(e), July 1, 2007—Notification Requirements; and

b. 40 CFR 355.40(a)(2)(vii), July 1, 2007—Emergency Release Notification.

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:603 (April 2006), LR 32:2248 (December 2006), LR 33:640 (April 2007), LR 33:2628 (December 2007), LR 34:69 (January 2008), LR 34:866 (May 2008), repromulgated LR 34:981 (June 2008).

Herman Robinson, CPM
Executive Counsel

0806#011

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Medical Use of Byproduct Material
Recognition of Specialty Boards
(LAC 33:XV.102, 725, 729, 731, and 763)(RP045ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.102, 725, 729, 731, and 763 (Log #RP045ft).

This Rule is identical to federal regulations found in 10 CFR Part 35, 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 Rule. This Rule is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule updates the state radiation regulations to coincide with amendments in the federal regulations modifying the training and experience requirements relating to the recognition of specialty board certifications by the NRC and agreement states. This Rule provides the criteria that specialty boards have to meet before they can be recognized by the NRC or agreement states. Amendments to the *Code of Federal Regulations* in 10 CFR Part 35 have been completed regarding the training and experience requirements of a radiation safety officer. Louisiana is required to adopt or amend the state radiation regulations pertaining to the training and experience requirements of a radiation safety officer in order to maintain an adequate agreement state program. The basis and rationale for this rule are to mirror the federal regulations and maintain an adequate agreement state program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection

Chapter 1. General Provisions

§102. Definitions and Abbreviations

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that chapter.

* * *

Authorized Medical Physicist—an individual who meets the requirements in LAC 33:XV.763.J.1 and M, or who is identified as an authorized medical physicist or teletherapy physicist on:

1. - 4. …

* * *

Preceptor—an individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

* * *

Radiation Safety Officer—an individual who:

1. meets the requirements in LAC 33:XV.763.A.1 or 3.a and M; or

2. is identified as a *radiation safety officer* on:

a. a specific medical use license issued by the agreement state or Nuclear Regulatory Commission; or

b. a medical use permit issued by a Nuclear Regulatory Commission master material licensee.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007), LR 34:982 (June 2008).

Chapter 7. Use of Radionuclides in the Healing Arts

§725. Release of Individuals Containing Radiopharmaceuticals or Permanent Implants

A. A licensee may authorize the release from its control of any individual who has been administered unsealed byproduct material or implants containing byproduct material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 millisieverts (0.5 rem).

NOTE: The current revision of NUREG–1556, Vol. 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 5 mSv (0.5 rem).

B. A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 millisievert (0.1 rem). If the total effective dose equivalent to a breast-feeding infant or child could exceed 1 millisievert (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

1. guidance on the interruption or discontinuation of breast-feeding; and

2. information on the potential consequences, if any, of failure to follow the guidance.

C. The licensee shall maintain a record of the basis for authorizing the release of an individual in accordance with Subsections A and B of this Section for three years after the date of release of the individual, if the total effective dose equivalent is calculated by:

1. - 4. …

D. The licensee shall maintain a record for three years after the date of release of the individual that the instructions required by Subsection B of this Section were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding 5 millisieverts (0.5 rem).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2104 (November 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:982 (June 2008).

§729. Use of Radiopharmaceuticals for Uptake, Dilution, or Excretion Studies

A. - C.1. …

2. prepared by an authorized nuclear pharmacist; a physician who is an authorized user and who meets the requirements specified in LAC 33:XV.763.D, or E.1 and D.3.a.ii.(f), or, before October 24, 2005, LAC 33:XV.763.D; or an individual under the supervision of either as specified in LAC 33:XV.709;

3. - 4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2104 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1177 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:982 (June 2008).

§731. Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies

A. - G.4. …

H. Use of Unsealed Byproduct Material for Imaging and Localization Studies for Which a Written Directive Is Not Required

1. Except for quantities that require a written directive under LAC 33:XV.777.B, a licensee may use any unsealed byproduct material prepared for medical use for imaging and localization studies that is:

a. obtained from a manufacturer or preparer licensed under LAC 33:XV.328.J or equivalent agreement state requirements; or

b. prepared by:

i. an authorized nuclear pharmacist;

ii. a physician who is an authorized user and who meets the requirements specified in LAC 33:XV.763.D, or E.1 and D.3.a.ii.(f); or

iii. an individual under the supervision, as specified in LAC 33:XV.709, of the authorized nuclear pharmacist in Clause H.1.b.i of this Section or the physician who is an authorized user in accordance with Clause H.1.b.ii of this Section;

c. obtained from and prepared by an NRC or agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by the FDA; or

d. prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2104 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2589 (November 2000), LR 27:1238 (August 2001), LR 30:1178 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:982 (June 2008).

§763. Training

A. Training for a Radiation Safety Officer. Except as provided in Subsection B of this Section, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in LAC 33:XV.706 to be an individual:

1. who is certified by a specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Paragraphs A.4 and 5 of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. meet the requirements of Clauses A.1.a.i-iii of this Section, as follows:

i. hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

ii. have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

iii. pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

b. meet the requirements of Clauses A.1.b.i-iii of this Section, as follows:

i. hold a master's or doctor's degree in physics, medical physics, another physical science, engineering, or applied mathematics from an accredited college or university;

ii. have two years of full-time practical training and/or supervised experience in medical physics:

(a). under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the commission or an agreement state; or

(b). in a clinical nuclear medicine facility providing diagnostic and/or therapeutic services under the direction of a physician who meets the requirements for an authorized user in Subsection D or Paragraph E.1 of this Section; and

iii. pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

2. who has completed a structured educational program consisting of both:

a. 200 hours of classroom and laboratory training in the following areas:

i. radiation physics and instrumentation;

ii. radiation protection;

iii. mathematics pertaining to the use and measurement of radioactivity;

iv. radiation biology; and

v. radiation dosimetry; and

b. one year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a commission or agreement state license or permit issued by a commission master material licensee that authorizes similar type(s) of use(s) of byproduct material involving the following:

i. shipping, receiving, and performing related radiation surveys;

ii. using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

iii. securing and controlling byproduct material;

iv. using administrative controls to avoid mistakes in the administration of byproduct material;

v. using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

vi. using emergency procedures to control byproduct material; and

vii. disposing of byproduct material; or

c. Reserved.

3. who meets one of the following requirements:

a. is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the commission or an agreement state in accordance with Subsection J of this Section, and who has experience in radiation safety for similar types of use of byproduct material for which the licensee is seeking the approval of the individual as radiation safety officer, and who meets the requirements in Paragraphs A.4 and 5 of this Section; or

b. is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the

licensee's license and has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has radiation safety officer responsibilities; and

4. who has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in Paragraph A.5 and in Clauses A.1.a.i and ii or Clauses A.1.b.i and ii or Paragraph A.2 or Subparagraph A.3.a or b of this Section, and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

5. who has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

B. Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist, and Authorized Nuclear Pharmacist

1. An individual identified as a radiation safety officer, a teletherapy or medical physicist, or a nuclear pharmacist on an agreement state or a Nuclear Regulatory Commission license or a permit issued by a commission or an agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before October 24, 2002, need not comply with the training requirements of Subsection A, J, or K of this Section, respectively.

2. An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on a commission or an agreement state license or a permit issued by a commission or an agreement state broad scope licensee or a master material license permit or by a master material license permittee of broad scope between October 24, 2002 and April 29, 2005, need not comply with the training requirements of Subsection A, J, or K of this Section, respectively.

3. A radiation safety officer, a medical physicist, or a nuclear pharmacist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or in the practice of nuclear pharmacy at a government agency or federally-recognized Indian tribe before November 30, 2007, or at any other location of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of Subsection A, J, or K of this Section, respectively, when performing the same uses. A nuclear pharmacist, who prepared only radioactive drugs containing accelerator-produced radioactive materials, or a medical physicist, who used only accelerator-produced radioactive materials, at the locations and time period identified in this Paragraph, qualifies as an authorized nuclear pharmacist or an authorized medical physicist, respectively, for those materials and uses performed before these dates, for purposes of this Chapter.

4. A physician, dentist, or podiatrist identified as an authorized user for the medical use of byproduct material on a license issued by the commission or agreement state, a permit issued by a commission master material licensee, a permit issued by a commission or an agreement state broad scope licensee, or a permit issued by a commission master material license broad scope permittee before October 24, 2002, who performs only those medical uses for which he or she was authorized on that date need not comply with the training requirements of this Section.

5. A physician, dentist, or podiatrist identified as an authorized user for the medical use of byproduct material on a license issued by the commission or agreement state, a permit issued by a commission master material licensee, a permit issued by a commission or an agreement state broad scope licensee, or a permit issued by a commission master material license broad scope permittee who performs only those medical uses for which he or she was authorized between October 24, 2002 and April 29, 2005, need not comply with the training requirements of this Section.

6. A physician, dentist, or podiatrist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses performed at a government agency or federally-recognized Indian tribe before November 30, 2007, or at any other location of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of this Section when performing the same medical uses. A physician, dentist, or podiatrist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses at the locations and time period identified in this Paragraph, qualifies as an authorized user for those materials and uses performed before these dates, for purposes of this Chapter.

C. Training for Uptake, Dilution, and Excretion Studies. Except as provided in Subsections B and L of this Section, the licensee shall require the authorized user of unsealed byproduct material for the uses authorized in LAC 33:XV.729 to be a physician:

1. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph C.3.b of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies that includes the topics listed in Clauses C.3.a.i-ii of this Section; and

b. pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

2. who is an authorized user under Subsection D or Paragraph E.1 of this Section, or equivalent agreement state requirements, or Subparagraph C.3.a of this Section;

3. who meets the following requirements:

a. has completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide

handling techniques applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies. The training and experience must include:

i. classroom and laboratory training in the following areas:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity;

(d). chemistry of byproduct material for medical use; and

(e). radiation biology; and

ii. work experience, under the supervision of an authorized user who meets the requirements in Subsection C or D or Paragraph E.1 of this Section, or equivalent agreement state requirements, involving:

(a). ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b). performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(c). calculating, measuring, and safely preparing patient or human research subject dosages;

(d). using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(e). using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(f). administering dosages of radioactive drugs to patients or human research subjects; and

b. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Subsection C or D or Paragraph E.1 of this Section, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in Subparagraph C.1.a or C.3.a of this Section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.729.

D. Training for Imaging and Localization Studies. Except as provided in Subsections B and L of this Section, the licensee shall require the authorized user of unsealed byproduct material for the uses authorized in LAC 33:XV.731.H to be a physician:

1. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph D.3.b of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed byproduct material for imaging and localization studies that includes the topics listed in Clauses D.3.a.i-ii of this Section; and

b. pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

2. who is an authorized user under Paragraph E.1 of this Section, and meets the requirements in Subclause D.3.a.ii.(f) of this Section, or equivalent agreement state requirements; or

3. who meets the following requirements:

a. has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material for imaging and localization studies. The training and experience must include, at a minimum:

i. classroom and laboratory training in the following areas:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity;

(d). chemistry of byproduct material for medical use; and

(e). radiation biology; and

ii. work experience, under the supervision of an authorized user, who meets the requirements in this Subsection, or Subclause D.3.a.ii.(f) and Paragraph E.1 of this Section, or equivalent agreement state requirements, involving:

(a). ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b). performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(c). calculating, measuring, and safely preparing patient or human research subject dosages;

(d). using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(e). using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

(f). eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(g). administering dosages of radioactive drugs to patients or human research subjects; and

b. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Subsection, or Paragraph E.1 and Subclause D.3.a.ii.(f) of this Section, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in Subparagraph D.1.a or D.3.a of this Section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.729 and LAC 33:XV.731.H.

E. Therapeutic Use of Radiopharmaceuticals

1. Training for Use of Unsealed Byproduct Material for Which a Written Directive Is Required. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of unsealed byproduct material

for the uses authorized in LAC 33:XV.735.C to be a physician:

a. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Division E.1.b.i.(b).(vii) and Clause E.1.b.ii of this Section. (Specialty boards whose certification processes have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

i. successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in Subclause E.1.b.i.(a) through Division E.1.b.i.(b).(v) of this Section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

ii. pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed byproduct material for which a written directive is required; or

b. who meets the following requirements:

i. has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material requiring a written directive. The training and experience must include:

(a). classroom and laboratory training in the following areas:

(i). radiation physics and instrumentation;

(ii). radiation protection;

(iii). mathematics pertaining to the use and measurement of radioactivity;

(iv). chemistry of byproduct material for medical use; and

(v). radiation biology; and

(b). work experience, under the supervision of an authorized user who meets the requirements in this Paragraph, or equivalent agreement state requirements. A supervising authorized user, who meets the requirements in Subparagraph E.1.b of this Section, must also have experience in administering dosages in the same dosage category or categories (i.e., Division E.1.b.i.(b).(vii) of this Section) as the individual requesting authorized user status. The work experience must involve:

(i). ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii). performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii). calculating, measuring, and safely preparing patient or human research subject dosages;

(iv). using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(v). using procedures to contain spilled byproduct material safely and using proper decontamination procedures;

(vi). Reserved.

(vii). administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

[a]. oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I–131, for which a written directive is required;

[b]. oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131 (Experience with at least three such cases also satisfies the requirement in Subdivision E.1.b.i.(b).(vii).[a] of this Section.);

[c]. parenteral administration of any beta emitter, or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or

[d]. parenteral administration of any other radionuclide, for which a written directive is required; and

ii. has obtained written attestation that the individual has satisfactorily completed the requirements in Clause E.1.a.i and Division E.1.b.i.(b).(vii) or Clause E.1.b.i of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.735.C. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Paragraph or equivalent agreement state requirements. The preceptor authorized user who meets the requirements in Subparagraph E.1.b of this Section must have experience in administering dosages in the same dosage category or categories (i.e., Division E.1.b.i.(b).(vii) of this Section) as the individual requesting authorized user status.

2. Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Less Than or Equal To 1.22 Gigabecquerels (33 Millicuries). Except as provided in Subsection B of this Section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries) to be a physician:

a. who is certified by a medical specialty board whose certification process includes all of the requirements in Clauses E.2.c.i and ii of this Section and whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Clause E.2.c.iii of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.); or

b. who is an authorized user in accordance with Paragraph E.1 of this Section for uses listed in Subdivision E.1.b.i.(b).(vii).[a] or [b] of this Section, Paragraph E.3 of this Section, or equivalent agreement state requirements; or

c. who meets the following requirements:

i. has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity;

(d). chemistry of byproduct material for medical use; and

(e). radiation biology; and

ii. has work experience, under the supervision of an authorized user who meets the requirements in Paragraph E.1, 2, or 3 of this Section, or equivalent agreement state requirements. A supervising authorized user who meets the requirements in Subparagraph E.1.b of this Section must also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[a] or [b] of this Section. The work experience must involve:

(a). ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b). performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(c). calculating, measuring, and safely preparing patient or human research subject dosages;

(d). using administrative controls to prevent a medical event involving the use of byproduct material;

(e). using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(f). administering dosages to patients or human research subjects that includes at least three cases involving the oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

iii. has obtained written attestation that the individual has satisfactorily completed the requirements in Clauses E.2.c.i and ii of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in LAC 33:XV.735.C. The written attestation must be signed by a preceptor authorized user who meets the requirements in Paragraph E.1, 2, or 3 of this Section, or equivalent agreement state requirements. A preceptor authorized user who meets the requirement in Subparagraph E.1.b of this Section must also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[a] or [b] of this Section.

3. Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Greater Than 1.22 Gigabecquerels (33 Millicuries). Except as provided in Subsection B of this Section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries) to be a physician:

a. who is certified by a medical specialty board whose certification process includes all of the requirements in Clauses E.3.c.i and ii of this Section and whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Clause E.3.c.iii of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.); or

b. who is an authorized user in accordance with Paragraph E.1 of this Section for uses listed in Subdivision E.1.b.i.(b).(vii).[b] of this Section, or equivalent agreement state requirements; or

c. who meets the following requirements:

i. has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity;

(d). chemistry of byproduct material for medical use; and

(e). radiation biology; and

ii. has work experience, under the supervision of an authorized user who meets the requirements in Paragraph E.1 or 3 of this Section, or equivalent agreement state requirements. A supervising authorized user who meets the requirements in Subparagraph E.1.b of this Section must also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[b] of this Section. The work experience must involve:

(a). ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b). performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(c). calculating, measuring, and safely preparing patient or human research subject dosages;

(d). using administrative controls to prevent a medical event involving the use of byproduct material;

(e). using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(f). administering dosages to patients or human research subjects that includes at least three cases involving the oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

iii. has obtained written attestation that the individual has satisfactorily completed the requirements in Clauses E.3.c.i and ii of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in LAC 33:XV.735.C. The written attestation must be signed by a preceptor authorized user who meets the requirements in Paragraph E.1 or 3 of this Section, or equivalent agreement state requirements. A preceptor authorized user who meets the requirements in Subparagraph E.1.b of this Section must also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[b] of this Section.

4. Training for the Parenteral Administration of Unsealed Byproduct Material Requiring a Written Directive. Except as provided in Subsection B of this Section, the licensee shall require an authorized user for the parenteral

administration requiring a written directive to be a physician:

a. who is an authorized user in accordance with Paragraph E.1 of this Section for uses listed in Subdivision E.1.b.i.(b).(vii).[c] or [d] of this Section, or equivalent agreement state requirements; or

b. who is an authorized user in accordance with Subsection F or I of this Section, or equivalent agreement state requirements, and who meets the requirements in Subparagraph E.4.d of this Section; or

c. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state in accordance with Subsection F or I of this Section, and who meets the requirements in Subparagraph E.4.d of this Section; or

d. who meets the following requirements:

i. has successfully completed 80 hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training must include:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity;

(d). chemistry of byproduct material for medical use; and

(e). radiation biology; and

ii. has work experience, under the supervision of an authorized user who meets the requirements in Paragraph E.1 or 4 of this Section, or equivalent agreement state requirements, in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in Paragraph E.1 of this Section must have experience in administering dosages as specified in Subdivisions E.1.b.i.(b).(vii).[c] and/or [d] of this Section. The work experience must involve:

(a). ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b). performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(c). calculating, measuring, and safely preparing patient or human research subject dosages;

(d). using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(e). using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(f). administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or at least three cases involving the parenteral administration of any other radionuclide for which a written directive is required; and

iii. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraph E.4.b or c of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in Paragraph E.1 or 4 of this Section, or equivalent agreement state requirements. A preceptor authorized user who meets the requirements in Paragraph E.1 of this Section must have experience in administering dosages as specified in Subdivisions E.1.b.i.(b).(vii).[c] and/or [d] of this Section.

F. Training for Use of Manual Brachytherapy Sources. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of a manual brachytherapy source for the uses authorized in LAC 33:XV.741 to be a physician:

1. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph F.2.d of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

b. pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

2. who meets the following requirements:

a. has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

i. 200 hours of classroom and laboratory training in the following areas:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity; and

(d). radiation biology; and

ii. 500 hours of work experience under the supervision of an authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements at a medical institution, involving:

(a). ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(b). checking survey meters for proper operation;

(c). preparing, implanting, and removing brachytherapy sources;

(d). maintaining running inventories of material on hand;

(e). using administrative controls to prevent a medical event involving the use of byproduct material; and

(f). using emergency procedures to control byproduct material; and

b. has completed three years of supervised clinical experience in radiation oncology under the supervision of an authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in Subparagraph F.2.b of this Section; and

c. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in Subparagraph F.1.a, or Paragraph F.2 and Subparagraph F.2.c of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized in LAC 33:XV.741.

G. Training for Ophthalmic Use of Strontium-90. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician:

1. who is an authorized user in accordance with Subsection F of this Section, or equivalent agreement state requirements; or

2. who meets the following requirements:

a. has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training must include:

i. radiation physics and instrumentation;

ii. radiation protection;

iii. mathematics pertaining to the use and measurement of radioactivity; and

iv. radiation biology; and

b. supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve:

i. examination of each individual to be treated;

ii. calculation of the dose to be administered;

iii. administration of the dose; and

iv. follow-up and review of each individual's case history; and

c. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Subsections F and G of this Section, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in Paragraphs G.1 and 2 of this Section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

H. Training for Use of Sealed Sources for Diagnosis. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized in LAC 33:XV.739 to be a physician, dentist, or podiatrist:

1. who is certified by a specialty board whose certification process includes all of the requirements in Paragraphs H.2 and 3 of this Section and whose certification process has been recognized by the commission or an agreement state. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.); or

2. who has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:

a. radiation physics and instrumentation;

b. radiation protection;

c. mathematics pertaining to the use and measurement of radioactivity; and

d. radiation biology; and

3. who has completed training in the use of the device for the uses requested.

I. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of a sealed source for a use authorized in LAC 33:XV.747 to be a physician:

1. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph I.2.c and Paragraph I.3 of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

b. pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders, and external beam therapy; or

2. who meets the following requirements:

a. has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

i. 200 hours of classroom and laboratory training in the following areas:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity; and

(d). radiation biology; and

ii. 500 hours of work experience under the supervision of an authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements at a medical institution, involving:

(a). reviewing full calibration measurements and periodic spot-checks;

(b). preparing treatment plans and calculating treatment doses and times;

(c). using administrative controls to prevent a medical event involving the use of byproduct material;

(d). implementing emergency procedures to be followed in the event of the abnormal operation of a medical unit or console;

(e). checking and using survey meters; and

(f). selecting the proper dose and how it is to be administered; and

b. has completed three years of supervised clinical experience in radiation therapy under the supervision of an authorized user who meets the requirements in this Subsection, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in Subparagraph I.2.b of this Section; and

c. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraph I.1.a or Paragraph I.2 and Subparagraph I.2.c, and Paragraph I.3 of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Subsection or equivalent agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

3. who has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

J. Training for an Authorized Medical Physicist. Except as provided in Subsection B of this Section, the licensee shall require the authorized medical physicist to be an individual:

1. who is certified by a specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph J.2.b and Paragraph J.3 of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. hold a master's or doctor's degree in physics, medical physics, another physical science, engineering, or applied mathematics from an accredited college or university;

b. have two years of full-time practical training and/or supervised experience in medical physics:

i. under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the commission or an agreement state; or

ii. in a clinical radiation facility providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of a physician who meets the requirements for an authorized user in Subsection F or I of this Section; and

c. pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

2. who meets the following requirements:

a. holds a master's or doctor's degree in physics, medical physics, another physical science, engineering, or applied mathematics from an accredited college or university, and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in a clinical radiation facility that provides high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services, and must include:

i. performing sealed source leak tests and inventories;

ii. performing decay corrections;

iii. performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units, as applicable; and

iv. conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units, as applicable; and

b. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraphs J.1.a and b and Paragraph J.3, or Subparagraph J.2.a and Paragraph J.3, of this Section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in this Subsection, or equivalent agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

3. who has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

K. Training for an Authorized Nuclear Pharmacist. Except as provided in this Subsection the licensee shall require the authorized nuclear pharmacist to be a pharmacist:

1. who is certified by a specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph K.2.b of this Section. (The names of board certifications that have been recognized by the commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

b. hold a current, active license to practice pharmacy;

c. provide evidence of having acquired at least 4000 hours of training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and

d. pass an examination in nuclear pharmacy administered by diplomates of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

2. who meets the following requirements:

a. has completed 700 hours in a structured educational program consisting of both:

i. didactic training in the following areas:

(a). radiation physics and instrumentation;

(b). radiation protection;

(c). mathematics pertaining to the use and measurement of radioactivity;

(d). chemistry of byproduct material for medical use; and

(e). radiation biology; and

ii. supervised practical experience in a nuclear pharmacy involving:

(a). shipping, receiving, and performing related radiation surveys;

(b). using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and if appropriate, instruments used to measure alpha-emitting or beta-emitting radionuclides;

(c). calculating, assaying, and safely preparing dosages for patients or human research subjects;

(d). using administrative controls to avoid medical events in the administration of byproduct material; and

(e). using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

b. has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in Subparagraphs K.1.a, b, and c, or Paragraph K.2, of this Section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

L. Physician Training in a Three-Month Program. A physician who, before July 1, 1984, began a three-month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program, is exempted from the requirements of Subsection C or D of this Section.

M. Recentness of Training. The training and experience specified in Subsections A-K of this Section shall have been obtained within the seven years preceding the date of application, or the individual shall have had continuing applicable experience since the required training and experience was completed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2106 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1186 (June 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006), LR 34:983 (June 2008).

Herman Robinson, CPM
Executive Counsel

0806#022

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

RCRA Burden Reduction Initiative
(LAC 33:V.322, 519, 523, 532, 1509, 1513, 1515, 1529, 1737, 1739, 1903, 1905, 1907, 1911, 1913, 2109, 2245, 2246, 2247, 2303, 2515, 2605, 2719, 2803, 2805, 2807, 3007, 3023, 3111, 3119, 3317, 3319, 3517, 3527, 3707, 3711, 3715, 4365, 4367, 4373, 4387, 4395, 4403, 4407, 4411, 4433, 4435, 4437, 4438, 4440, 4441, 4451, 4452, 4462, 4472, 4489, 4498, 4507, 4512, 4701, and 4703)
(HW100ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste regulations, LAC 33:V.322, 519, 523, 532, 1509, 1513, 1515, 1529, 1737, 1739, 1903, 1905, 1907, 1911, 1913, 2109, 2245, 2246, 2247, 2303, 2515, 2605, 2719, 2803, 2805, 2807, 3007, 3023, 3111, 3119, 3317, 3319, 3517, 3527, 3707, 3711, 3715, 4365, 4367, 4373, 4387, 4395, 4403, 4407, 4411, 4433, 4435, 4437, 4438, 4440, 4441, 4451, 4452,

4462, 4472, 4489, 4498, 4507, 4512, 4701, and 4703 (Log #HW100ft).

This Rule is identical to federal regulations found in 71 FR 16862-16915 (April 4, 2006), 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 Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule will implement changes to the hazardous waste program made in 40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271, involving recordkeeping and reporting requirements in order to reduce the paperwork burden these requirements impose on the state, the regulated community, and EPA. The Rule will streamline information collection requirements, ensuring that only the information that is actually needed and used to implement the Resource Conservation and Recovery Act (RCRA) program is collected. To maintain consistency with the federal regulations, LAC 33:V.4451 is renumbered as §4452. The goals of protecting human health and the environment are maintained. In accordance with the Paperwork Reduction Act, EPA promulgated changes to the regulatory requirements of the RCRA hazardous waste program. The state must adopt these changes to maintain equivalency with EPA standards. The basis and rationale for this Rule are to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality—Hazardous Waste
Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§322. Classification of Permit Modifications

The following is a listing of classifications of permit modifications made at the request of the permittee.

Modifications	Class
A. - N.3. …	
O. Burden Reduction	
1. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to LAC 33:V.1513.B.2	1
2. Changes to recordkeeping and reporting requirements pursuant to LAC 33:V.1513.F.9, 1737.B.1, 1739.A.2, 1913.F, 3111.A.2, 3321.G, and 3513.E.5	1
3. Changes to inspection frequency for tank systems pursuant to LAC 33:V.1911.B	1
4. Changes to detection and compliance monitoring program pursuant to LAC 33:V.3317.D, G.2, and G.3, and 3319.F and G	1

[1]Class 1 modifications requiring prior administrative authority approval.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:815 (September 1996), amended by the Office of the Secretary, LR 24:2245 (December 1998), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:270 (February 2000), LR 27:292 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:620 (April 2008), LR 34:992 (June 2008).

Chapter 5. Permit Application Contents
Subchapter E. Specific Information Requirements

§519. Contents of Part II: General Requirements

A. Part II of the permit application consists of the general information requirements of this Section, and the specific information requirements in LAC 33:V.519-549 applicable to the facility. The Part II information requirements presented in LAC 33:V.519-549 reflect the standards promulgated in LAC 33:V.Chapters 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 37. These information requirements are necessary in order for the administrative authority to determine compliance with LAC 33:V.Chapters 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 37. If owners and operators of Hazardous Waste Management facilities can demonstrate that the information prescribed in Part II cannot be provided to the extent required, the administrative authority may make allowance for submission of such information on a case-by-case basis. Information required in Part II shall be submitted to the administrative authority and signed in accordance with requirements in Subchapter B of this Chapter. Certain technical data, such as design drawings and specifications and engineering studies, shall be certified by a qualified professional engineer. For post-closure permits, only the information specified in LAC 33:V.528 is required in Part II of the permit application.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1465 (August 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:992 (June 2008).

§523. Specific Part II Information Requirements for Tanks

Except as otherwise provided in LAC 33:V.1901, owners and operators of facilities that use tanks to store or treat hazardous waste must provide the following additional information:

A. a written assessment that is reviewed and certified by an independent, qualified professional engineer as to the structural integrity and suitability for handling hazardous waste for each tank system, as required under LAC 33:V.1903 and 1905;

B. - K. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 13:433 (August 1987) LR 16:220 (March 1990), LR 16:614 (July 1990), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1692 (September

1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:992 (June 2008).

§532. Special Part II Information Requirements for Drip Pads

A. - A.3.n. …

o. a certification signed by an independent, qualified professional engineer stating that the drip pad design meets the requirements of LAC 33:V.2805.A-F;

p. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 34:993 (June 2008).

Chapter 15. Treatment, Storage, and Disposal Facilities

§1509. General Inspection Requirements

A.1. - A.2. …

B. Inspection Schedule

1. - 3. …

4. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, a malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the terms and frequencies called for in LAC 33:V.1709, 1719, 1721, 1731, 1753, 1755, 1757, 1759, 1761, 1763, 1765, 1907, 1911, 2109, 2309, 2507, 2711, 2907, 3119, and 3205, where applicable.

[Comment: LAC 33:V.517.G requires the inspection schedule to be submitted with Part II of the permit application. The department will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, the department may modify or amend the schedule as may be necessary.]

C. - D. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:993 (June 2008).

§1513. Contingency Plan and Emergency Procedures

A. - B.1. …

2. If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or 40 CFR Part 300, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with these requirements. The owner or operator may develop one contingency plan that meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

B.3. - F.8.a. …

b. all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

9. The owner or operator must note in the operating record the time, date, and details of any incident that requires implementation of the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to SPOC that includes:

a. name, address, and telephone number of the owner or operator;

b. name, address, and telephone number of the facility;

c. date, time, and type of incident (e.g., fire, explosion);

d. name and quantity of material(s) involved;

e. the extent of injuries, if any;

f. an assessment of actual or potential hazards to human health or the environment, where this is applicable; and

g. estimated quantity and disposition of recovered material that resulted from the incident.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2104 (October 2007), LR 34:993 (June 2008).

§1515. Personnel Training

A. - A.4. …

5. For facility employees who receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations in 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this Section, provided that the overall facility training meets all the requirements of this Section.

B. - E. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of the Secretary, Legal Affairs Division, LR 34:993 (June 2008).

§1529. Operating Record and Reporting Requirements

A. …

B. The following information must be recorded, as it becomes available, and maintained in the operating record for three years, unless otherwise specified in Paragraphs B.1-22 of this Section:

1. a description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility, utilizing specifications in Tables 1 and 2 of this Section. This information must be maintained in the operating record until closure of the facility;

2. - 4, Table 2. …

5. the location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

6. - 8. …

9. monitoring, testing, or analytical data, and corrective action where required by LAC 33:V.1504, 1711.C-F, 1713, 1741.D-I, 1743, 1751, 1753, 1755, 1757, 1759, 1761, 1763, 1765, 1767, 1903, 1907, 1911, 2304, 2306, 2309, 2504, 2507, 2508, 2509, 2709, 2711, 2719, 2904, 2906, 2907, 3119, 3203, 3205, and Chapter 33, as well as corrective action cites. Maintain this information in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, which must be maintained in the operating record until closure of the facility;

10. …

11. all closure cost estimates and, for disposal facilities, all post-closure cost estimates. This information must be maintained in the operating record until closure of the facility;

12. records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal prohibition granted in accordance with LAC 33:V.2239, a petition approved in accordance with LAC 33:V.2241 or 2271, a determination made under LAC 33:V.2273, or a certification under LAC 33:V.2235 and the applicable notice required by a generator under LAC 33:V.2245. This information must be maintained in the operating record until closure of the facility;

13. - 18. …

19. a certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable, and that the proposed method of treatment, storage, or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment;

20. any records required under LAC 33:V.1501.H.13;

21. monitoring, testing, or analytical data where required by LAC 33:V.3119. This information must be maintained in the operating record for five years; and

22. certifications as required by LAC 33:V.1913.F. This information must be maintained in the operating record until closure of the facility.

C. - E. …

1. releases, fires, and explosions as specified in LAC 33:V.1513.F.9;

2. - 3. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:278 (February 2000), LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:827 (May 2006), LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:993 (June 2008).

Chapter 17. Air Emission Standards

Subchapter B. Equipment Leaks

§1737. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak

A. - B. …

1. A performance test as specified in Subsection C of this Section shall be conducted initially upon designation, annually, and at other times requested by the administrative authority.

2. If a valve leak is detected, it shall be repaired in accordance with LAC 33:V.1729.D and E.

C. Performance tests shall be conducted in the following manner.

1. - 3. …

D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2105 (October 2007), LR 34:994 (June 2008).

§1739. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair

A. Alternative Work Practices. An owner or operator subject to the requirements of LAC 33:V.1729 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in Paragraphs B.2 and 3 of this Section.

B. Leak Detection Skip Period

1. - 4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:439 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2105 (October 2007), LR 34:994 (June 2008).

Chapter 19. Tanks

§1903. Assessment of Existing Tank System's Integrity

A. For each existing tank system that does not have secondary containment meeting the requirements of LAC 33:V.1907.B-I, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in Subparagraph B.5.c of this Section, the owner or operator must obtain and keep on file at the facility a written

assessment reviewed and certified by an independent, qualified professional engineer, in accordance with LAC 33:V.513, that attests to the tank system's integrity by November 20, 1988. Tanks excluded from permitting requirements under LAC 33:V.1109.E.1 must have an assessment as described in this Section by November 20, 1990.

B. - B.5.a. …

b. for other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination, that is certified by an independent, qualified professional engineer in accordance with LAC 33:V.513, that addresses cracks, leaks, corrosion and erosion;

c. - d. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:994 (June 2008).

§1905. Design and Installation of New Tank Systems or Components

A. Owners or operators of new tank systems or components must obtain and submit to the Office of Environmental Services, at the time of submittal of Part II information, a written assessment, reviewed and certified by an independent, qualified professional engineer, in accordance with LAC 33:V.513, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture or fail. This assessment, which will be used by the administrative authority to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

1. - 5.c. …

B. The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation.

1. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

a. weld breaks;

b. punctures;

c. scrapes of protective coatings;

d. cracks;

e. corrosion;

f. other structural damage or inadequate construction/installation.

2. All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

C. - H. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 16:683 (August 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007), LR 34:995 (June 2008).

§1907. Containment and Detection of Releases

A. …

1. for all new and existing tank systems or components, prior to their being put into service; and

2. for tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

B. Secondary containment systems must be:

B.1. - I.2. …

a. conduct a leak test as in Paragraph I.1 or 2 of this Section; or

b. develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent, qualified professional engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

3. - 5. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007), LR 34:624 (April 2008), LR 34:995 (June 2008).

§1911. Inspections

A. …

B. The owner or operator must inspect, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

C. In addition, except as noted under Subsection D of this Section, the owner or operator must inspect at least once each operating day:

1. aboveground portions of the tank system, if any, to detect corrosion or releases of waste; and

2. the construction materials and the area immediately surrounding the externally accessible portion of the tank

system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

D. Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure that leaks are promptly identified, must inspect at least weekly those areas described in Paragraphs C.1 and 2 of this Section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

E. Ancillary equipment that is not provided with secondary containment, as described in LAC 33:V.1907.F.1-4, must be inspected at least once each operating day.

F. The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

1. the proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

2. all sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

G. The owner or operator must document in the operating record of the facility an inspection of those items in Subsections A-C and F of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 14:790 (November 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 34:995 (June 2008).

§1913. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems

A tank system or secondary containment system from which there has been a leak or spill, or that is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements.

A. - E.4. …

F. Certification of Major Repairs. If the owner/operator has repaired a tank system in accordance with Subsection E of this Section and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified professional engineer in accordance with LAC 33:V.513 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

[Note: The administrative authority may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order requiring corrective action or such other response as is deemed necessary to protect human health or the environment.]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2107 (October 2007), LR 34:996 (June 2008).

Chapter 21. Containers

§2109. Inspections

A. At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. Remedial action as described in LAC 33:V.1513 shall be taken.

B. - C. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), repromulgated LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:996 (June 2008).

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

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

A. Requirements for generators. A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in LAC 33:V.2223, 2230, or 2236. This determination can be made concurrently with the hazardous waste determination required in LAC 33:V.1103 in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using Test Method 1311 in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of LAC 33:V.1519 and 2247.A. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed, and some soils are contaminated by such hazardous wastes. These treatment standards are also found in LAC 33:V.2223, and are described in detail in LAC 33:V.2299.Appendix, Table 3. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste, or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must

comply with the special requirements of LAC 33:V.2246 in addition to any applicable requirements in this Section.

B. If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file. The notice must include the information in column "LAC 33:V.2245.B" of the Generator Paperwork Requirements Table in Subsection D of this Section. Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA hazardous waste numbers and manifest number of the first shipment and must state, "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination." No further notification is necessary until such time as the waste or facility changes, in which case a new notification must be sent and a copy placed in the generator's file.

B.1 - K. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266, 267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1728 (September 1998), LR 25:447 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), LR 27:295 (March 2001), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007), LR 34:996 (June 2008).

§2246. Special Rules Regarding Wastes That Exhibit a Characteristic

A. The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under this Chapter. This determination may be made concurrently with the hazardous waste determination required in LAC 33:V.1103. For purposes of this Chapter, the waste will carry the waste code for any applicable listing under LAC 33:V.4901. In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (LAC 33:V.4903), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in Subsection B of this Section. If the generator determines that his waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, or POLYM of LAC 33:V.2299.Appendix, Table 3), the generator must determine the *underlying hazardous constituents* (as defined in LAC 33:V.2203.A), in the characteristic waste.

B. - C. …

D. Wastes that exhibit a characteristic are also subject to the requirements of LAC 33:V.2245, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the solid waste disposal facility receiving the waste changes.

D.1. - F.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007), LR 34:997 (June 2008).

§2247. Owners or Operators of Treatment or Disposal Facilities: Testing, Waste Minimization, Recordkeeping and Notice Requirements

A. - D. …

E. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions in LAC 33:V.4139.B-D regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in Subsection C of this Section and a one-time notice that includes the information listed in Subsection B of this Section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

F. - H. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266, 267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:670 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:282 (February 2000), LR 26:2478 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 32:607 (April 2006), LR 33:2110 (October 2007), LR 34:997 (June 2008).

Chapter 23. Waste Piles

§2303. Design and Operating Requirements

A. - B.4. …

C. The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

C.1. - L. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 20:1000 (September 1994), LR 21:266, 267 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2480 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2111 (October 2007), LR 34:997 (June 2008).

Chapter 25. Landfills

§2515. Special Requirements for Bulk and Containerized Liquids

A. The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

B. Containers holding free liquids must not be placed in a landfill unless:

1. all free-standing liquids:

a. have been removed by decanting, or other methods;

b. have been mixed with sorbent or solidified so that the free-standing liquid is no longer present; or

c. have been otherwise eliminated; or

2. the container is very small such as an ampule; or

3. the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

4. the container is a *lab pack* as defined in LAC 33:V.109 and is disposed of in accordance with LAC 33:V.2519.

C. To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.

D. The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the administrative authority, or the administrative authority determines, that:

1. the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

2. placement in such owner's or operator's landfill will not present a risk of contamination of any *underground source of drinking water* or *groundwater* (as these terms are defined in LAC 33:V.109).

E. Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in this Subsection; materials that pass one of the tests in Paragraph E.2 of this Section; or materials that are determined by the administrative authority to be nonbiodegradable through the petition process in LAC 33:I.Chapter 9.

1. Nonbiodegradable Sorbents. The following materials are nonbiodegradable sorbents:

a. inorganic minerals, other inorganic materials, and elemental carbon, such as aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon; or

b. high molecular weight synthetic polymers, such as polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers. This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

c. mixtures of these nonbiodegradable materials.

2. Tests for Nonbiodegradable Sorbents

a. The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi.

b. The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria.

c. The sorbent material is determined to be nonbiodegradable under OECD test 301B: [CO_2 Evolution (Modified Sturm Test)].

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, in LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:821 (September 1996), amended by the Office of the Secretary, LR 23:299 (March 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:680 (April 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:998 (June 2008).

Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup

§2605. Staging Piles

[NOTE: This Section is written in a special format to make it easier to understand the regulatory requirements. Like other department and USEPA regulations, this establishes enforceable legal requirements. For this Section, *I* and *you* refer to the owner/operator.]

A. - C.1. …

2. certification by an independent, qualified professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the administrative authority determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

C.3. - M. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:285 (February 2000), amended LR 28:1196 (June 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 34:998 (June 2008).

Chapter 27. Land Treatment

§2719. Closure and Post-Closure Care

A. - A.8. …

B. For the purpose of complying with LAC 33:V.3517, when closure is completed, the owner or operator may submit to the Office of Environmental Services certification by an independent, qualified soil scientist, in lieu of an independent, qualified professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

C. - D.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 14:790 (November 1988), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2461 (October 2005), LR 33:2112 (October 2007), LR 34:999 (June 2008).

Chapter 28. Drip Pads

§2803. Assessment of Existing Drip Pad Integrity

A. For each *existing drip pad* as defined in LAC 33:V.2801, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this Chapter, except the requirements for liners and leak detection systems of LAC 33:V.2805.C. No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of LAC 33:V.2805 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of LAC 33:V.2805, except the standards for liners and leak detection systems, specified in LAC 33:V.2805.C, and must document the age of the drip pad to the extent possible, to document compliance with Subsection B of this Section.

B. The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of LAC 33:V.2805.C and submit the plan to the Office of Environmental Services no later than two years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of LAC 33:V.2805 and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent, qualified professional engineer.

C. Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Office of Environmental Services the as-built drawings for the drip pad together with a certification by an independent, qualified professional engineer attesting that the drip pad conforms to the drawings.

D. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2112 (October 2007), LR 34:999 (June 2008).

§2805. Design and Operating Requirements

Owners and operators of drip pads must ensure that the pads are designed, installed, and operated in accordance with Subsection A or C of this Section.

A. - A.5.NOTE. …

B. The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this Section, except for Subsection C of this Section.

C. - G. …

H. The drip pad must be evaluated to determine that it meets the requirements of Subsections A-G of this Section, and the owner or operator must obtain a statement from an independent, qualified professional engineer certifying that the drip pad design meets the requirements of this Section.

I. - P. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), LR 30:1674 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2113 (October 2007), LR 34:627 (April 2008), LR 34:999 (June 2008).

§2807. Inspections

A. During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of LAC 33:V.2805 by an independent, qualified professional engineer. The certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

B. - B.3.Note. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:944 (September 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 34:999 (June 2008).

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3007. Interim Status Standards for Burners

A. - C.8.d. …

D. Periodic Recertifications. The owner or operator must conduct compliance testing and submit to the Office of Environmental Services a recertification of compliance

under provisions of Subsection C of this Section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of Paragraph C.8 of this Section.

E. - J.4. …

K. Recordkeeping. The owner or operator must keep in the operating record of the facility all information and data required by this Section for five years.

L. …

[NOTE: Repealed.]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:822 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1740 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2483 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2463 (October 2005), LR 33:2114 (October 2007), LR 34:629 (April 2008), LR 34:999 (June 2008).

§3023. Standards for Direct Transfer

A. - E.3.a.iii. …

b. The owner or operator must inspect cathodic protection systems, if used, to ensure that they are functioning properly according to the schedule provided in LAC 33:V.4440.E.

3.c. - 6. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:826 (September 1996), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1000 (June 2008).

Chapter 31. Incinerators

§3111. Performance Standards

A. - A.1, equation. …

2. An incinerator burning hazardous waste F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated (under LAC 33:V.3109) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in Paragraph A.1 of this Section.

A.3. - B. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1000 (June 2008).

§3119. Monitoring and Inspections

A. - C. …

D. This monitoring and inspection data must be recorded and the records must be placed in the operating record as required by LAC 33:V.1529 and maintained in the operating record for five years.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1000 (June 2008).

Chapter 33. Groundwater Protection

§3317. Detection Monitoring Program

An owner or operator required to establish a detection monitoring program under this Subpart must, at a minimum, discharge the following responsibilities.

A. - C. …

D. The administrative authority will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under Subsection A of this Section in accordance with LAC 33:V.3315.G.

E. - G.1. …

2. Immediately sample the groundwater in all monitoring wells and determine whether constituents listed in LAC 33:V.3325, Table 4 are present, and if so, in what concentrations. However, the administrative authority, on a discretionary basis, may allow sampling for a site-specific subset of constituents from LAC 33:V.3325, Table 4 and other representative/related waste constituents.

3. For any LAC 33:V.3325 compounds found in the analysis pursuant to Paragraph G.2 of this Section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the administrative authority and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to Paragraph G.2 of this Section, the hazardous constituents found during this initial LAC 33:V.3325, Table 4 analysis will form the basis for compliance monitoring.

G.4. - H. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 10:496 (July 1984), LR 16:399 (May 1990), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2485 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2464 (October 2005), LR 33:2115 (October 2007), LR 34:1000 (June 2008).

§3319. Compliance Monitoring Program

An owner or operator required to establish a compliance monitoring program under this Chapter must, at a minimum, discharge the following responsibilities.

A. - E. …

F. The administrative authority will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with LAC 33:V.3315.G.

G. Annually, the owner or operator must determine whether additional hazardous constituents listed in LAC 33:V.3325, Table 4 that could possibly be present, but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in LAC 33:V.3317.F. To accomplish this, the owner or operator must consult with the administrative authority to determine, on a case-by-case basis, which sample collection event during the year will involve enhanced sampling, the number of monitoring wells at the compliance point to undergo enhanced sampling, the number of samples to be collected from each of these monitoring wells, and the specific constituents from LAC 33:V.3325, Table 4 for which these samples must be analyzed. If the enhanced sampling event indicates that LAC 33:V.3325, Table 4 constituents that are not already identified in the permit as monitoring constituents are present in the groundwater, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the administrative authority, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentrations of these additional constituents to the administrative authority within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the administrative authority within seven days after completion of the initial analysis and add them to the monitoring list.

H. - J. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:399 (May 1990), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2485 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2464 (October 2005), LR 33:2115 (October 2007), LR 34:630 (April 2008), LR 34:1000 (June 2008).

Chapter 35. Closure and Post-Closure

Subchapter A. Closure Requirements

§3517. Certification of Closure

A. Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent, qualified professional engineer. Documentation supporting the independent professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for closure under LAC 33:V.3707.

B. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2487 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2466 (October 2005), LR 33:2117 (October 2007), LR 34:630 (April 2008), LR 34:1001 (June 2008).

Subchapter B. Post-Closure Requirements

§3527. Certification of Completion of Post-Closure Care

A. No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent, qualified professional engineer. Documentation supporting the independent professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under LAC 33:V.3711.I.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2488 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2467 (October 2005), LR 33:2118 (October 2007), LR 34:1001 (June 2008).

Chapter 37. Financial Requirements

Subchapter A. Closure Requirements

§3707. Financial Assurance for Closure

An owner or operator of each facility must establish financial assurance for closure of the facility. Under this Part, the owner or operator must choose from the options as specified in Subsections A-F of this Section, which choice the administrative authority must find acceptable based on the application and the circumstances.

A. - H. …

I. Release of the Owner or Operator from the Requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent, qualified professional engineer that final closure has been completed in accordance with the approved closure plan, and for facilities subject to LAC 33:V.3525, after receiving the certification required under LAC 33:V.3525.B.2, the administrative authority will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for final closure of the particular facility, unless the administrative authority has reason to believe that final closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of LAC 33:V.3525. The administrative authority shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan or

that the owner or operator has failed to comply with the applicable requirements of LAC 33:V.3525.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2488 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2467 (October 2005), LR 33:2118 (October 2007), LR 34:1001 (June 2008).

Subchapter B. Post-Closure Requirements

§3711. Financial Assurance for Post-Closure Care

The owner or operator of a hazardous waste management unit subject to the requirements of LAC 33:V.3709 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. Under this Section, the owner or operator must choose from the options as specified in Subsections A-F of this Section, which choice the administrative authority must find acceptable based on the application and the circumstances.

A. - H. …

I. Release of the Owner or Operator from the Requirements of this Part. Within 60 days after receiving certifications from the owner or operator and an independent, qualified professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the administrative authority will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the administrative authority has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The administrative authority shall provide the owner or operator with a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1512 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2490 (November 2000), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2469 (October 2005), LR 33:2120 (October 2007), LR 34:1002 (June 2008).

Subchapter D. Insurance Requirements

§3715. Liability Requirements

A. - D. …

E. Period of Coverage. Within 60 days after receiving certifications from the owner or operator and an independent, qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the administrative authority will notify the owner or operator in writing that he is no longer required by this Section to maintain liability coverage for that facility, unless the administrative authority has reason to believe that closure has not been in accordance with the approved closure plan.

F. - K. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:486 (April 1993), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1513 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2492 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2471 (October 2005), LR 33:2122 (October 2007), LR 34:1002 (June 2008).

Chapter 43. Interim Status

Subchapter D. Manifest System, Recordkeeping, and Reporting

§4365. Additional Reports

A. …

1. releases, fires, and explosions as specified in LAC 33:V.1513.F.9;

2. - 4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 17:658 (July 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1002 (June 2008).

Subchapter E. Groundwater Monitoring

§4367. Applicability

Facilities that have interim status must comply with this Subchapter in lieu of LAC 33:V.Chapter 33.

A. - C. …

1. within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, that satisfies the requirements of LAC 33:V.4373.G, for an alternate groundwater monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility;

2. not later than one year after the effective date of these regulations, initiate the determinations specified in LAC 33:V.4373.H;

3. prepare a report in accordance with LAC 33:V.4373.I and place it in the facility's operating record and maintain until closure of the facility;

C.4. - E.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:484 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2499 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2126 (October 2007), LR 34:633 (April 2008), LR 34:1002 (June 2008).

§4373. Preparation, Evaluation, and Response

A. - E. …

F. Within 15 days after the notification required in Subsection E of this Section, the owner or operator must develop a specific plan, based on the outline required in Subsection A of this Section and certified by a qualified geologist or geotechnical engineer, for a groundwater quality assessment program at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.

G. - H.2. …

I. The owner or operator must make his first determination required in Subsection H of this Section as soon as technically feasible and prepare a report containing an assessment of the groundwater quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

J. - M. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of the Secretary, LR 24:2248 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2499 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2126 (October 2007), LR 34:1003 (June 2008).

Subchapter F. Closure and Post-Closure

§4387. Certification of Closure

A. Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent, qualified professional engineer. Documentation supporting the independent professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for closure under LAC 33:V.4403.H.

B. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2501 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2475 (October 2005), LR 33:2128 (October 2007), LR 34:1003 (June 2008).

§4395. Certification of Completion of Post-Closure Care

A. No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Office of Environmental Services, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent, qualified professional engineer. Documentation supporting the independent professional engineer's certification must be furnished to the administrative authority upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under LAC 33:V.4407.H.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2502 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2477 (October 2005), LR 33:2129 (October 2007), LR 34:1003 (June 2008).

Subchapter G. Financial Requirements

§4403. Financial Assurance for Closure

By the effective date of these regulations an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in Subsections A-E of this Section.

A. - G. …

H. Release of the Owner or Operator from the Requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent, qualified professional engineer that closure has been completed in accordance with the approved closure plan and after receiving the certification required under LAC 33:V.4393.B.2 for facilities subject to LAC 33:V.4393, the administrative authority will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for final closure of the particular facility, unless the administrative authority has reason to believe that the final closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of LAC 33:V.4393. The administrative authority shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan or that the owner or operator has failed to comply with the applicable requirements of LAC 33:V.4393.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:219 (March 1990), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1520 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2502 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2477 (October 2005), LR 33:2129 (October 2007), LR 34:1003 (June 2008).

§4407. Financial Assurance for Post-Closure Care

An owner or operator of each hazardous waste disposal unit must establish financial assurance for post-closure care of the facility. He must choose from the options as specified in Subsections A-E of this Section.

A. - G. …

H. Release of the Owner or Operator from the Requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent, qualified professional engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the administrative authority will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for post-closure care of that unit, unless the administrative authority has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The administrative authority will provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1521 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2504 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2479 (October 2005), LR 33:2131 (October 2007), LR 34:1003 (June 2008).

§4411. Liability Requirements

A. - D. …

E. Period of Coverage. Within 60 days after receiving certifications from the owner or operator and an independent, qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the administrative authority will notify the owner or operator in writing that he is no longer required by this Section to maintain liability coverage for that facility, unless the administrative authority has reason to believe that closure has not been in accordance with the approved closure plan.

F. - K. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:627 (May 1993), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1521 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2506 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2481 (October 2005), LR 33:2133 (October 2007), LR 34:1004 (June 2008).

Subchapter I. Tanks

§4433. Assessment of Existing Tank System's Integrity

A. For each existing tank system that does not have secondary containment meeting the requirements of these regulations, the owner or operator must determine that the tank system is not leaking or unfit for use. Except as provided in Subsection C of this Section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified professional engineer in accordance with LAC 33:V.513 that attests to the tank system's integrity by November 20, 1988.

B. - B.5.a. …

b. for other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described in Subparagraph B.5.a of this Section, or an internal inspection and/or other tank integrity examination certified by an independent, qualified professional engineer in accordance with LAC 33:V.513 that addresses cracks, leaks, corrosion, and erosion.

C. - D. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 18:723 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1004 (June 2008).

§4435. Design and Installation of New Tank Systems or Components

A. Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent, qualified professional engineer in accordance with LAC 33:V.513 attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

1. - 5.c. …

B. The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified professional engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

B.1. - G. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 18:723 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1004 (June 2008).

§4437. Containment and Detection of Releases

A. …

1. for all new and existing tank systems or components, prior to their being put into service;

2. for tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

B. Secondary containment systems must be:

B.1. - I.1. …

2. For other than non-enterable underground tanks and for all ancillary equipment, an annual leak test, as described in Paragraph I.1 of this Section, or an internal inspection or other tank integrity examination by an independent, qualified professional engineer that addresses cracks, leaks, corrosion, and erosion must be conducted at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

3. - 4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), LR 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2507 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2482 (October 2005), LR 33:2134 (October 2007), LR 34:1004 (June 2008).

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

A. - B.4.NOTE. …

C. Except as noted in Subsection D of this Section, generators who accumulate between 100 and 1,000 kg/month of hazardous waste in tanks must inspect, where present:

1. - 5.NOTE. …

D. Generators who accumulate between 100 and 1,000 kg/month of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure that leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in Paragraphs C.1-5 of this Section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

E. Generators of between 100 and 1,000 kg/month accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

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

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

1. ignitable or reactive waste must not be placed in a tank, unless:

a. the waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under LAC 33:V.4903.B or D, and LAC 33:V.4321.B is complied with; or

b. the waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

c. the tank is used solely for emergencies.

2. the owner or operator of a facility that treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's *Flammable and Combustible Liquids Code*, (1977 or 1981) (incorporated by reference, see LAC 33:V.110).

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

1. incompatible wastes, or incompatible wastes and materials, must not be placed in the same tank, unless LAC 33:V.4321.B is complied with; and

2. hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material, unless LAC 33:V.4321.B is complied with.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:714 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1005 (June 2008).

§4440. Inspections

A. The owner or operator must inspect, where present, at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

B. Except as noted under Subsection C of this Section, the owner or operator must inspect at least once each operating day:

1. overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

2. the aboveground portions of the tank system, if any, to detect corrosion or releases of waste; and

3. the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment structure (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

C. Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure that leaks are promptly identified, must inspect at least weekly those areas described in Paragraphs B.1-3 of this Section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

D. Ancillary equipment that is not provided with secondary containment, as described in LAC 33:V.4437.F.1-4, must be inspected at least once each operating day.

E. The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

1. the proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

2. all sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

F. The owner or operator must document in the operating record of the facility an inspection of those items in Subsections A and B of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 18:723 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1005 (June 2008).

§4441. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements.

A. - E.4. …

F. Certification of Major Repairs. If the owner or operator has repaired a tank system in accordance with Subsection E of this Section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified professional engineer in accordance with LAC 33:V.513 that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

[Note: The administrative authority may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order requiring corrective action or such other response as deemed necessary to protect human health or the environment.]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:723 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1006 (June 2008).

Subchapter J. Surface Impoundments

NOTE: §4451 has moved to §4452.

§4452. Response Actions [Formerly §4451]

A. The owner or operator of surface impoundment units subject to LAC 33:V.4462.A must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in Subsection B of this Section.

B. - B.5. …

6. within 30 days after the notification that the action leakage rate has been exceeded, submit to the administrative authority the results of the analyses specified in Paragraphs B.3-5 of this Section, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the administrative authority a report summarizing the results of any remedial actions taken and actions planned.

C. To make the leak and/or remediation determinations in Paragraphs B.3-5 of this Section, the owner or operator must:

1. - 4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007), LR 34:1006 (June 2008).

§4462. Design Requirements

A. The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners and a leachate collection and removal system between the liners and operate the leachate collection and removal system in accordance with LAC 33:V.2903.J, unless exempted under LAC 33:V.2903.C, K, or L.

B. - H. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:220 (March 1990), amended LR 17:368 (April 1991), LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007), LR 34:1006 (June 2008).

Subchapter K. Waste Piles

§4472. Response Actions

A. The owner or operator of waste pile units subject to LAC 33:V.4476 must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in Subsection B of this Section.

B. - C.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2508 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007), LR 34:1006 (June 2008).

Subchapter L. Land Treatment

§4489. Closure and Post-Closure

A. - D.4. …

E. For the purpose of complying with LAC 33:V.4387, when closure is completed the owner or operator may submit

to the Office of Environmental Services certification both by the owner or operator and by an independent, qualified soil scientist in lieu of an independent, qualified professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

F. - F.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007), LR 34:1006 (June 2008).

Subchapter M. Landfills

§4498. Response Actions

A. The owner or operator of landfill units subject to LAC 33:V.4512.A must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in Subsection B of this Section.

B. - C.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1007 (June 2008).

§4507. Special Requirements for Liquid Waste

A. The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

B. Containers holding free liquids must not be placed in a landfill unless:

1. all free-standing liquid:

a. has been removed by decanting or other methods;

b. has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

c. has been otherwise eliminated; or

2. the container is very small, such as an ampule; or

3. the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

4. the container is a lab pack as defined in LAC 33:V.4511 and is disposed of in accordance with LAC 33:V.4511.

C. To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.

D. The date for compliance with Subsection A of this Section is November 19, 1981. The date for compliance with Subsection B of this Section is March 22, 1982.

E. Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in Paragraph E.1 of this Section; materials that pass one of the tests in Paragraph E.2 of this Section; or materials that are determined by EPA to be nonbiodegradable through the petition process in LAC 33:V.105.

1. Nonbiodegradable Sorbents. The following materials are nonbiodegradable sorbents:

a. inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas [illite], vermiculites, zeolites, calcium carbonate [organic free limestone]; oxides/hydroxides, alumina, lime, silica [sand], diatomaceous earth, perlite [volcanic glass]; expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, and activated charcoal/activated carbon); or

b. high molecular weight synthetic polymers (e.g., polyethylene, high-density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene, and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

c. mixtures of these nonbiodegradable materials.

2. Tests for Nonbiodegradable Sorbents

a. The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

b. the sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

c. the sorbent material is determined to be nonbiodegradable under OECD test 301B: [CO_2 Evolution (Modified Sturm Test)].

F. The placement of any liquid that is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the administrative authority or the administrative authority determines that:

1. the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains or may reasonably be anticipated to contain hazardous waste; and

2. placement in such owner's or operator's landfill will not present a risk of contamination of any *underground source of drinking water*, as defined in LAC 33:V.109.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), LR 21:266 (March 1995), LR 22:829 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:686 (April 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:634 (April 2008), LR 34:1007 (June 2008).

§4512. Design and Operating Requirements

A. The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit, must install two or more liners and a leachate collection and removal system above and between such liners and operate the leachate collection and removal

systems, in accordance with LAC 33:V.2503.L, unless exempted by Subsection C, D, or E of this Section.

B. - I. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:220 (March 1990), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2483 (October 2005), LR 33:2135 (October 2007), LR 34:634 (April 2008), LR 34:1007 (June 2008).

Subchapter T. Containment Buildings

§4701. Applicability

A. The requirements of this Subchapter apply to owners or operators who store or treat hazardous waste in units designed and operated under LAC 33:V.4703. The owner or operator is not subject to the definition of land disposal in RCRA Section 3004(k) provided that the unit:

1. - 5. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 21:944 (September 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 34:635 (April 2008), LR 34:1008 (June 2008).

§4703. Design and Operating Standards

A. - C.1.d. …

2. obtain and keep on-site a certification by a qualified professional engineer that the containment building design meets the requirements of Subsections A-C of this Section;

C.3. - E. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2509 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2136 (October 2007), LR 34:635 (April 2008), LR 34:1008 (June 2008).

Herman Robinson, CPM
Executive Counsel

0806#020

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

RCRA XVI Management, Testing, and Methods Innovation (LAC 33:V.105, 109, 110, 529, 535, 537, 1127, 1516, 1703, 1711, 1741, 1901, 2223, 2299, 2603, 3001, 3005, 3013, 3025, 3115, 3325, 3807, 3823, 3845, 4003, 4033, 4047, 4067, 4357, 4431, 4727, 4901, 4903, 4909, and 4999; and LAC 33:VII.115 and 3005) (MM006ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Environmental Quality regulations, LAC 33:V.105, 109, 110, 529, 535, 537, 1127, 1516, 1703, 1711, 1741, 1901, 2223, 2299, 2603, 3001, 3005, 3013, 3025, 3115, 3325, 3807, 3823, 3845, 4003, 4033, 4047, 4067, 4357, 4431, 4727, 4901, 4903, 4909, and 4999; and LAC 33:VII.115 and 3005 (Log #MM006ft).

This Rule is identical to federal regulations found in 70 FR 34538-34592 (June 14, 2005), 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 Rule. This Rule is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule promulgates the RCRA XVI cluster regarding waste management, testing and monitoring activities, methods innovation, an update to SW-846, and in the related Sections, recordkeeping and reporting requirements to reduce the paperwork burden. This Rule is not adding additional requirements to the regulations. Instead, these amendments will allow more flexibility when conducting RCRA-related sampling and analysis under the hazardous and nonhazardous solid waste regulations. Other clarifications and technical amendments are being made that will make it easier and more cost-effective to comply with the hazardous waste regulations. A testing requirement under the Clean Air Act in the National Emission Standards for Hazardous Air Pollutants for hazardous waste combustors is being amended. This action is needed in order for the state hazardous waste regulations to maintain equivalency with the federal regulations and to coincide with the federal regulations in implementing a performance-based measurement system in the RCRA program. The basis and rationale for this Rule are to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

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

A. - D.1.i.iii.(d). …

(e). prior to operating pursuant to this exclusion, the plant owner or operator submits to the Office of Environmental Services a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language:

"I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation."

The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the administrative authority for reinstatement. The administrative authority may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur;

1.j. - 6.h. …

i. the facility prepares and submits a report to the Office of Environmental Services, by March 15 of each year, that includes the following information for the previous calendar year:

D.6.i.i. - H. …

I. Petitions for Equivalent Testing or Analytical Methods

1. Any person seeking approval of an equivalent testing or analytical method may petition for a regulatory amendment under this Subsection and LAC 33:I.Chapter 9. To be successful, the petitioner must demonstrate to the satisfaction of the administrative authority that the proposed method is equal to or superior to the corresponding method prescribed in these regulations, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

2. - 2.b. …

c. comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in these regulations;

I.2.d. - M.3.a. ...

i. does not contain the constituent or constituents (as defined in LAC 33:V.4901.G, Table 6) that caused the administrative authority to list the waste; or

M.3.a.ii. - O.2.b.i. …

ii. the extent to which the material is handled before reclamation to minimize loss;

iii. the time periods between generating the material and its reclamation and between reclamation and return to the original primary production process;

iv. the location of the reclamation operation in relation to the production process;

v. whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

vi. whether the person who generates the material also reclaims it; and

vii. other relevant factors.

c. The administrative authority may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

O.2.c.i. - P.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008).

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Hazardous Waste—a *solid waste*, as defined in this Section, is a hazardous waste if:

1. - 2.c.vii. ...

d. Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105, Table 1):

2.d.i. - 6.b. ...

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814

(September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008).

§110. References

A. When used in LAC 33:V.Subpart 1 the publications and methods listed in this Section shall be used to comply with these regulations.

B. The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, Box C700, West Conshohocken, PA 19428-2959, or go to: *http://www.astm.org*:

1. ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," approved for LAC 33:V.4903.B;

2. ASTM D-93-79 or D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," approved for LAC 33:V.4903.B;

3. ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," approved for LAC 33:V.1709 and 4555;

4. ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," approved for LAC 33:V.1709 and 4555;

5. ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," approved for LAC 33:V.1741;

6. ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," approved for LAC 33:V.1741;

7. ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," approved for LAC 33:V.1741;

8. ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," approved for LAC 33:V.1741;

9. ASTM D 2879-92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," approved for LAC 33:V.4727;

10. ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.

C. The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800:

1. "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, approved for LAC 33:V.1713 and 4559;

2. "Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, PB99-121949," approved for LAC 33:V.4999.Appendix E;

3. the following methods as published in the test methods compendium known as *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, Third Edition. A suffix "A" in the method number indicates revision one (the method has been revised once). A suffix "B" in the method number indicates revision two (the method has been revised twice). A suffix "C" in the method number indicates revision three (the method has been revised three times). A suffix "D" in the method number indicates revision four (the method has been revised four times):

a. Method 0010, dated September 1986 and in the Basic Manual, approved for LAC 33:V.4999.Appendix E;

b. Method 0020, dated September 1986 and in the Basic Manual, approved for LAC 33:V.4999.Appendix E;

c. Method 0030, dated September 1986 and in the Basic Manual, approved for LAC 33:V.4999.Appendix E;

d. Method 1320, dated September 1986 and in the Basic Manual, approved for LAC 33:V.4999.Appendix E;

e. Method 1311, dated September 1992 and in Update I, approved for LAC 33:V.2223, 2245, 2247, 4903.E, and 4999.Appendix E;

f. Method 1330A, dated September 1992 and in Update I, approved for LAC 33:V.4999.Appendix E;

g. Method 1312 dated September 1994 and in Update II, approved for LAC 33:V.4999.Appendix E;

h. Method 0011, dated December 1996 and in Update III, approved for LAC 33:V.3099.Appendix I and 4999.Appendix E;

i. Method 0023A, dated December 1996 and in Update III, approved for LAC 33:V.3009, 3099.Appendix I, and 4999.Appendix E;

j. Method 0031, dated December 1996 and in Update III, approved for LAC 33:V.4999.Appendix E;

k. Method 0040, dated December 1996 and in Update III, approved for LAC 33:V.4999.Appendix E;

l. Method 0050, dated December 1996 and in Update III, approved for LAC 33:V.3015, 3099.Appendix I, and 4999.Appendix E;

m. Method 0051, dated December 1996 and in Update III, approved for LAC 33:V.3015, 3099.Appendix I, and 4999.Appendix E;

n. Method 0060, dated December 1996 and in Update III, approved for LAC 33:V.3013, 3099.Appendix I, and 4999.Appendix E;

o. Method 0061, dated December 1996 and in Update III, approved for LAC 33:V.3013, 3099.Appendix I, and 4999.Appendix E;

p. Method 9071B, dated April 1998 and in Update IIIA, approved for LAC 33:V.4999.Appendix E;

q. Method 1010A, dated November 2004 and in Update IIIB, approved for LAC 33:V.4999.Appendix E;

r. Method 1020B, dated November 2004 and in Update IIIB, approved for LAC 33:V.4999.Appendix E;

s. Method 1110A, dated November 2004 and in Update IIIB, approved for LAC 33:V.4903.C and 4999.Appendix E;

t. Method 1310B, dated November 2004 and in Update IIIB, approved for LAC 33:V.4999.Appendix E;

u. Method 9010C, dated November 2004 and in Update IIIB, approved for LAC 33:V.2299, Tables 2, 7, and 10, and 4999.Appendix E;

v. Method 9012B, dated November 2004 and in Update IIIB, approved for LAC 33:V.2299, Tables 2, 7, and 10, and 4999.Appendix E;

w. Method 9040C, dated November 2004 and in Update IIIB, approved for LAC 33:V.4903.C and 4999.Appendix E;

x. Method 9045D, dated November 2004 and in Update IIIB, approved for LAC 33:V.4999.Appendix E;

y. Method 9060A, dated November 2004 and in Update IIIB, approved for LAC 33:V.1711, 1741, 4557, 4587, and 4999.Appendix E;

z. Method 9070A, dated November 2004 and in Update IIIB, approved for LAC 33:V.4999.Appendix E;

aa. Method 9095B, dated November 2004 and in Update IIIB, approved, LAC 33:V.1901, 2515, 4431, 4507, 4721, and 4999.Appendix E.

D. The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, Box 9101, Quincy, MA 02269-9101:

1. "Flammable and Combustible Liquids Code" (1977 or 1981), approved for LAC 33:V.1917, and 4443;

2. Reserved.

E. The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005:

1. API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," approved for LAC 33:V.4727;

2. Reserved.

F. The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC:

1. "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised," October 1992, EPA Publication Number EPA-450/R-92-019, approved for LAC 33:V.3099.Appendix I;

2. Reserved.

G. The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France:

1. The OECD Green List of Wastes (revised May 1994), the Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4, and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), approved for LAC 33:V.1127.I;

2. Reserved.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:814 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:656 (April 1998), LR 24:1690 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:270 (February 2000), LR 27:291 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1010 (June 2008).

Chapter 5. Permit Application Contents

Subchapter E. Specific Information Requirements

§529. Specific Part II Information Requirements for Incinerators

Except as LAC 33:V.Chapter 31 and Subsection F of this Section provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of Subsection A, B, or C of this Section:

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

c. an identification of any hazardous organic constituents listed in LAC 33:V.3105, Table 1, that are present in the waste to be burned, except that the applicant need not analyze for constituents listed in LAC 33:V.3105, Table 1, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques;

d. an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods;

C.1.e. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(24)(a) and 2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 22:817 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:2199 (November 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:319 (March 2003), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:620 (April 2008), LR 34:1011 (June 2008).

§535. Specific Part II Information Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste for Energy or Material Recovery and Not for Destruction

A. - A.2.b.i. ...

ii. results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in LAC 33:V.4901.G, Table 6, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques;

A.2.b.iii. - G.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:817 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:319 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:621 (April 2008), LR 34:1011 (June 2008).

Subchapter F. Special Forms of Permits

§537. Permits for Boiler and Industrial Furnaces Burning Hazardous Waste for Recycling Purposes Only (Boilers and industrial furnaces burning hazardous waste for destruction are subject to permit requirements for incinerators.)

A. - B.2.b.ii. ...

(a). an identification of any hazardous organic constituents listed in LAC 33:V.3105, Table 1, that are present in the feed stream, except that the applicant need not analyze for constituents listed in LAC 33:V.3105, Table 1, that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques;

(b). an approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods;

B.2.b.ii.(c). - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:818, 832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2468 (November 2000), LR 27:292 (March 2001), LR 29:320 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007), LR 34:622 (April 2008), LR 34:1012 (June 2008).

Chapter 11. Generators

Subchapter B. Transfrontier Shipments of Hazardous Waste

§1127. Transfrontier Shipments of Hazardous Waste for Recovery within the OECD

A. - A.2. …

B. General Conditions

1. Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to a green, amber, or red list and by United States national procedures as defined in Paragraph A.1 of this Section. The green, amber, and red lists are incorporated by reference in LAC 33:V.110.

B.1.a. - I.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:293 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007), LR 34:72 (January 2008), LR 34:1012 (June 2008).

Chapter 15. Treatment, Storage, and Disposal Facilities

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. - C.6.a.iii. ...

iv. Copy the manifest tracking number in Item 4 of the new manifest to the manifest reference number line in the Discrepancy block of the old manifest (Item 18a).

C.6.a.v. - D.7.Comment....

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008).

Chapter 17. Air Emission Standards

§1703. Definitions

A. As used in this Chapter, all terms not defined herein shall have the meanings given them in LAC 33:V.109.

* * *

Waste Stabilization Process—any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095B (Paint Filter Liquids Test) in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846 as incorporated by reference in LAC 33:V.110. A waste stabilization process includes mixing the hazardous waste with binders or other materials and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are *waste fixation* and *waste solidification*. This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1696 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:278 (February 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1012 (June 2008).

Subchapter A. Process Vents

§1711. Test Methods and Procedures

A. - C.1.a. ...

b. Method 18 or Method 25A in LAC 33:III.6071 for organic content. If Method 25A is used, the organic hazardous air pollutants (HAP) used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

c. …

d. Total organic mass flow rates shall be determined by one of the following equations:

i. for sources utilizing Method 18:

$$E_h = Q_{2sd}\left[\sum_{i=1}^{n} C_i MW_i\right][0.0416][10^{-6}]$$

where:

E_h = total organic mass flow rate, kg/h
Q_{2sd} = volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h
n = number of organic compounds in the vent gas
C_i = organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18
MW_i = molecular weight of organic compound i in the vent gas, kg/kg-mol
0.0416 = conversion factor for molar volume, kg-mol/m^3 (@ 293 K and 760 mm Hg)
10^{-6} = conversion from ppm

ii. for sources utilizing Method 25A:

$$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$$

where:

E_h = total organic mass flow rate, kg/h
Q = volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h
C = organic concentration in ppm, dry basis, as determined by Method 25A
MW = molecular weight of propane, 44
0.0416 = conversion factor for molar volume, kg-mol/m^3 (@ 293 K and 760 mm Hg)
10^{-6} = conversion from ppm

e. The annual total organic emission rate shall be determined by the following equation.

$$E_A = (E_h)(H)$$

where:

E_A = total organic mass emission rate, kg/y
E_h = total organic mass flow rate for the process vent, kg/h
H = total annual hours of operations for the affected unit, h

C.1.f. - D.1.b. ...

c. Each sample shall be analyzed, and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference in LAC 33:V.110) of *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, or each sample shall be analyzed for its individual organic constituents.

D.1.d. - E.3. ...

F. When an owner or operator and the administrative authority do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved by using direct measurement as specified in Paragraph D.1 of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), LR 22:818 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1699 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1012 (June 2008).

Subchapter B. Equipment Leaks

§1741. Test Methods and Procedures

A. - D.1....

2. Method 9060A (incorporated by reference in LAC 33:V.110) of *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, for computing total organic concentration of the sample or analyzing for its individual organic constituents; or

D.3. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1701 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1013 (June 2008).

Chapter 19. Tanks

§1901. Applicability

The requirements of this Chapter apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in Subsections A and B of this Section or LAC 33:V.1501.

A. Tank systems that are used to store or treat hazardous waste that contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements of LAC 33:V.1907. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test method must be used: EPA Method 9095B (Paint Filter Liquids Test) as described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.

B. - C. ...

D. Tanks meeting the requirements for the accumulation time exclusion of LAC 33:V.305.C and 1109.E.1 are subject to the requirements of LAC 33:V.1903.A, 1905.B-H, 1907.A, 1907.B-I, 1909, 1911, 1913, 1915.D, 1917, and 1919.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1107 (June 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1013 (June 2008).

Chapter 22. Prohibitions on Land Disposal
Subchapter A. Land Disposal Restrictions
§2223. Applicability of Treatment Standards

A. - A.3....

B. For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004-D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the Test Method 1311, the Toxicity Characteristic Leaching Procedure as described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, must be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: Method 1311 or Method 1310B, the Extraction Procedure Toxicity Test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the administrative authority under the procedures set forth in LAC 33:V.2227.

C. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:668 (April 1998), LR 24:1726 (September 1998), LR 25:444 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:280 (February 2000), LR 30:1682 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1014 (June 2008).

§2299. Appendix—Tables 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

Table 2. - Table 2.Footnote 6. …

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

Table 2.Footnote 8. - Table 7.Footnote 3. ...

[4] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010C or 9012B, found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

Table 7.Footnote 5. - Table 10. ...

[1] A facility may certify compliance with these treatment standards according to provisions in LAC 33:V.2245 and 2247.

[2] Cyanide Wastewater Standards for F006 are based on analysis of composite samples.

[3] These facilities must comply with 0.86 mg/L for amenable cyanides in the wastewater exiting the alkaline chlorination system. These facilities must also comply with LAC 33:V.2245.D for appropriate monitoring frequency consistent with the facilities' waste analysis plan.

[4] Cyanide nonwastewaters are analyzed using SW-846 Method 9010C or 9012B, sample size 10 grams, distillation time, 1 hour and 15 minutes.

[NOTE: NA means Not Applicable.]

Table 11. - Table 12. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:834 (September 1996), LR 23:566 (May 1997), LR 24:301 (February 1998), LR 24:670 (April 1998), LR 24:1732 (September 1998), LR 25:451 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:282 (February 2000), LR 27:295 (March 2001), LR 29:322 (March 2003), LR 30:1682 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:828 (May 2006), LR 32:1843 (October 2006), LR 34:625 (April 2008), LR 34:1014 (June 2008).

Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup
§2603. Corrective Action Management Units (CAMUs)

A. - A.3.b. …

c. The placement of any liquid that is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made in accordance with LAC 33:V.2515.D.

d. The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with LAC 33:V.2515.B. Sorbents used to treat free liquids in CAMUs must meet the requirements of LAC 33:V.2515.D.

A.4. - E.4.d.v. …

vi. Alternatives to TCLP. For metal-bearing wastes for which metals removal treatment is not used, the administrative authority may specify a leaching test other than the TCLP (Method 1311, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110) to measure treatment effectiveness, provided the administrative authority determines that an alternative leach testing protocol is appropriate for use and that the alternative more accurately reflects conditions at the site that affect leaching.

E.4.e. - K. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1192 (June 2002), amended LR 29:323 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:627 (April 2008), LR 34:1014 (June 2008).

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces
§3001. Applicability

A. - D.1.a.iv. ...

b. sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this Section by using appropriate methods; and

D.1.c. - G.1.a.iii. ...

b. sample and analyze the hazardous waste as necessary to document that the waste contains economically significant amounts of the metals and that the treatment recovers economically significant amounts of precious metal; and

G.1.c. - H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:821, 835 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 27:297 (March 2001), LR 27:712 (May 2001), LR 29:323 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:607 (April 2006), LR 34:628 (April 2008), LR 34:1014 (June 2008).

§3005. Permit Standards for Burners

A. - A.2.i. ...

B. Hazardous Waste Analysis

1. The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in LAC 33:V.3105, Table 1, that may reasonably be expected to be in the waste. Such constituents must be identified and quantified, if present, at levels detectable by using appropriate analytical procedures. The LAC 33:V.3105, Table 1 constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this Section and LAC 33:V.535 and 537 and to enable the permit writer to prescribe such permit conditions as are necessary to protect human health and the environment. Such analysis must be included as a portion of Part II of the permit application, or, for facilities operating under the interim status standards of LAC 33:V.3007, as a portion of the trial burn plan that may be submitted before Part II of the application under the provisions of LAC 33:V.537.D, as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards of LAC 33:V.3007 must provide the information required by LAC 33:V.535 and 537 to the greatest extent possible.

B.2. - G. …

H. Recordkeeping. The owner or operator must maintain in the operating record of the facility all information and data required by this Section for five years.

I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:822 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2483 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2463 (October 2005), LR 33:2113 (October 2007), LR 34:628 (April 2008), LR 34:1015 (June 2008).

§3013. Standards to Control Metals Emissions

A. General. The owner or operator must comply with the metals standards provided by Subsections B-F of this Section for each metal listed in Subsection B of this Section that is present in hazardous waste at detectable levels by using appropriate analytical procedures.

B. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:824 (September 1996), repromulgated LR 22:980 (October 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1741 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1626 (August 2007), LR 34:1015 (June 2008).

§3025. Regulation of Residues

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under LAC 33:V.105.D.2.d, h, and i unless the device and the owner or operator meet the following requirements.

A. - B. ...

1. Comparison of Waste-Derived Residue with Normal Residue. The waste-derived residue must not contain LAC 33:V.4901.G, Table 6 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in 40 CFR 266, Appendix VIII, as incorporated by reference in LAC 33:V.3099.Appendix H, that may be generated as products of incomplete combustion. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in LAC 33:V.3099.Appendix I;

a. - b. ...

2. Comparison of Waste-Derived Residue Concentrations with Health-Based Limits

a. Nonmetal Constituents. The concentration of each nonmetal toxic constituent of concern (specified in Paragraph B.1 of this Section) in the waste-derived residue must not exceed the health-based level specified in 40 CFR 266, Appendix VII, as incorporated by reference and amended in LAC 33:V.3099.Appendix G, or the level of detection, whichever is higher. If a health-based limit for a constituent of concern is not listed in 40 CFR 266, Appendix VII, as incorporated by reference and amended in LAC 33:V.3099.Appendix G, then a limit of 0.002 micrograms per kilogram or the level of detection (which must be determined by using appropriate analytical procedures), whichever is higher, shall be used. The levels specified in 40 CFR 266, Appendix VII (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in 40 CFR 266, Appendix VII.Note 1, as incorporated by reference and amended in LAC 33:V.3099.Appendix G) are administratively stayed under the condition, for those constituents specified in Paragraph B.1 of this Section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in LAC 33:V.2299.Appendix, Table 2 for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts, as defined by applicable agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or

standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by LAC 33:V.2299.Appendix, Table 2 for F039 nonwastewaters. In complying with the LAC 33:V.2299.Appendix, Table 2 for F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans;

[Note to Subparagraph B.2.a: The stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in LAC 33:V.2299.Appendix, Table 2 for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the *Federal Register* or the *Louisiana Register*.]

B.2.b. - C.2.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:826 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1107 (June 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:300 (March 2001), repromulgated LR 27:513 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1015 (June 2008).

Chapter 33. Groundwater Protection

§3325. Groundwater Monitoring List

Table 4 lists groundwater monitoring constituents.

Table 4. Groundwater Monitoring List

Common Name[1]	CAS RN[2]	Chemical Abstracts Service Index Name[3]
* * *		
[See prior text in Acenaphthene - Aniline]		
Anthracene	120-12-7	Anthracene
* * *		
[See prior text in Antimony - Endosulfan I]		
Endosulfan II	33213-65-9	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexa-chloro- 1,5,5a,6,9, 9a-hexahydro-, 3-oxide, (3α,5aα,6β,9α,9aα)-
* * *		
[See prior text in Endosulfan sulfate - Parathion]		
Polychlorinated biphenyls; PCBs	See Note 4	1,1'-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p- dioxins; PCDDs	See Note 5	Dibenzo[b,e][1,4]dioxin, chloro derivatives
Polychlorinated dibenzofurans; PCDFs	See Note 6	Dibenzofuran, chloro derivatives
* * *		
[See prior text in Pentachlorobenzene - Zinc]		

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

[3] CAS index names are those used in the ninth Cumulative Index.

[4] Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).

[5] This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

[6] This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:399 (May 1990), amended LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1742 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1848 (October 2006), LR 34:1016 (June 2008).

Chapter 31. Incinerators

§3115. Incinerator Permits for New or Modified Facilities

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

c. an identification of any hazardous, organic constituents listed in LAC 33:V.3105, Table 1, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in LAC 33:V.3105, Table 1 that would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques;

d. an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods;

B.2. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 22:828, 835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:683 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2484 (November 2000), LR 27:302 (March 2001), LR 29:324 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2464 (October 2005), LR 33:2115 (October 2007), LR 34:630 (April 2008), LR 34:1016 (June 2008).

Chapter 38. Universal Wastes

Subchapter A. General

§3807. Applicability—Mercury-Containing Equipment

A. - B. …

1. mercury-containing equipment that is not yet waste under LAC 33:V.Chapter 49 (Subsection C of this Section describes when mercury-containing equipment becomes waste.);

2. mercury-containing equipment that is not hazardous waste. Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in LAC 33:V.4903; and

3. equipment and devices from which the mercury-containing components have been removed.

C. - C.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:569 (May 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3117 (December 2005), LR 34:1017 (June 2008).

Subchapter B. Standards for Small Quantity Handlers of Universal Waste

§3823. Labeling/Marking

A. - A.3.b. ...

4. Universal waste mercury-containing equipment (i.e., each device), or a container in which the mercury-containing equipment is contained, shall be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury-Containing Equipment," or "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

5. - 8. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:572 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1761 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:303 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3119 (December 2005), LR 34:1017 (June 2008).

Subchapter C. Standards for Large Quantity Handlers of Universal Waste

§3845. Labeling/Marking

A. - A.3.b. ...

4. Universal waste mercury-containing equipment (i.e., each device), or a container in which the mercury-containing equipment is contained, shall be labeled or marked clearly with one of the following phrases: "Universal Waste—Mercury-Containing Equipment," or "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

5. - 8. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:575 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1761 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:303 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3121 (December 2005), LR 34:1017 (June 2008).

Chapter 40. Used Oil

Subchapter A. Materials Regulated as Used Oil

§4003. Applicability

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

A. - B.1.a. ...

b. Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105, Table 1).

B.1.b.i. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828, 836 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 25:481 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 34:631 (April 2008), LR 34:1017 (June 2008).

Subchapter D. Standards for Used Oil Transporter and Transfer Facilities

§4033. Rebuttable Presumption for Used Oil

A. - B.2. ...

C. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste, which is listed in LAC 33:V.4901. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105, Table 1).

C.1. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828 (September 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1017 (June 2008).

Subchapter E. Standards for Used Oil Processors and Re-Refiners

§4047. Rebuttable Presumption for Used Oil

A. - B.2. ...

C. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste, which is listed in LAC 33:V.4901. The owner or

operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105, Table 1).

1. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828 (September 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1017 (June 2008).

Subchapter F. Standards for Used Oil Burners That Burn Off-Specification Used Oil for Energy Recovery

§4067. Rebuttable Presumption for Used Oil

A. - B.3. ...

C. If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste, which is listed in LAC 33:V.4901. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105, Table 1).

C.1. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828 (September 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 34:632 (April 2008), LR 34:1018 (June 2008).

Chapter 43. Interim Status

Subchapter D. Manifest System, Recordkeeping, and Reporting

§4357. Operating Record

A. …

B. Records of each hazardous waste received, treated, stored, or disposed of at the facility must be recorded, as they become available, and maintained in the operating record for three years, unless otherwise specified in Paragraphs B.1-17 of this Section. These records shall include the following information:

1. a description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by LAC 33:V.4999.Appendix F. This information must be maintained in the operating record until closure of the facility;

2. the location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

3. - 5. …

6. summary reports and details of all incidents that require implementing the contingency plan as specified in LAC 33:V.1513.F.9;

7. …

8. monitoring, testing, or analytical data, and corrective action where required by LAC 33:V.4320, 4367, 4375, 4433, 4437, 4440, 4449, 4451, 4455, 4470, 4472, 4474, 4483, 4485, 4489.D.1, 4497, 4498, 4499, 4501, 4502, 4519, 4529, 4557, 4559, 4587, 4589, 4725, 4727, 4729, 4731, 4733, 4735, 4737, and 4739. Maintain this information in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility;

[Comment: As required by LAC 33:V.4375, monitoring data at disposal facilities must be kept throughout the post-closure period.]

9. all closure cost estimates under LAC 33:V.4401 and, for disposal facilities, all post-closure cost estimates under LAC 33:V.4405. This information must be maintained in the operating record until closure of the facility;

10. records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal prohibition granted in accordance with LAC 33:V.2239, monitoring data required in accordance with an exemption under LAC 33:V.2241 or 2271 or a certification under LAC 33:V.2235, and the applicable notice required of a generator under LAC 33:V.2245. All of this information must be maintained in the operating record until closure of the facility;

11. - 15. …

16. for an on-site storage facility, the information contained in the notice (except the manifest number) and the certification and demonstration, if applicable, required by the generator or the owner or operator of a treatment facility under LAC 33:V.2245 or 2247;

17. monitoring, testing, or analytical data and corrective action data where required by LAC 33:V.4367, 4373.F, and 4373.I, and the certification as required by LAC 33:V.4441.F. This information must be maintained in the operating record until closure of the facility.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), LR 25:484 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1803 (October 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1626 (August 2007), LR 34:633 (April 2008), LR 34:1018 (June 2008).

Subchapter I. Tanks

§4431. Applicability

A. …

1. Tank systems that are used to store or treat hazardous waste that contains no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements of LAC 33:V.4437. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.

2. - 3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 22:829 (September 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1019 (June 2008).

Subchapter V. Air Emission Standards for Tanks, Surface Impoundments, and Containers

§4727. Waste Determination Procedures

A. - A.3.b.ii. ...

iii. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR Part 60, Appendix A.

iv. ...

c. Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR Part 60, Appendix A for the total concentration of volatile organic constituents, or by using one or more appropriate methods when the individual organic compound concentrations are identified and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3) at 25°C. At the owner's or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25ºC. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25ºC that are contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet one of the following requirements in Clause A.3.c.i or ii of this Section and provided that the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3) at 25°C is met:

i. any EPA standard method that has been validated in accordance with *Alternative Validation Procedure for EPA Waste and Wastewater Methods*, 40 CFR Part 63, Appendix D; or

ii. any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR Part 63, Appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under Section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

A.3.d. - B.3.b.ii. ...

iii. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR Part 60, Appendix A.

iv. …

c. Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR Part 60, Appendix A for the total concentration of volatile organic constituents, or by using one or more appropriate methods when the individual organic compound concentrations are identified and summed and the summed waste concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3) at 25°C. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of LAC 33:V.4723 or 4725 are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. At the owner's or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any

contribution to the total VO concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at 25°C. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25°C that are contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet one of the following requirements in Clause B.3.c.i or ii of this Section and provided that the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3) at 25°C is met:

i. any EPA standard method that has been validated in accordance with *Alternative Validation Procedure for EPA Waste and Wastewater Methods*, 40 CFR Part 63, Appendix D; or

ii. any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR Part 63, Appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under Section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

B.3.d. - C.2. …

3. Direct Measurement to Determine the Maximum Organic Vapor Pressure of a Hazardous Waste

a. Sampling. A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR Part 60, Appendix A.

C.3.b. - D.9. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1747 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:288 (February 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1019 (June 2008).

Chapter 49. Lists of Hazardous Wastes

[Comment: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).]

§4901. Category I Hazardous Wastes

A. - B.3.b.ii.(b).(ii). ...

(c). Analytical Requirements

(i). Rinses must be tested by using an appropriate method.

(ii). *Not detected* means at or below the lower method calibration limit (MCL). The 2,3,7,8-TCDD-based MCL is 0.01 parts per trillion (ppt), sample weight of 1000g, IS spiking level of 1 ppt, final extraction volume of 10-50 µL. For other congeners, multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

B.3.b.ii.(d). - G.Table 6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:1627 (August 2007), LR 34:635 (April 2008), LR 34:1020 (June 2008).

§4903. Category II Hazardous Wastes

A. - B. ...

1. It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80, as incorporated by reference in LAC 33:V.110, or by a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78, as incorporated by reference in LAC 33:V.110.

B.2. - C. ...

1. It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040C in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.

2. It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by Method 1110A in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, and as incorporated by reference in LAC 33:V.110.

D. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 22:829 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:325 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:644 (April 2008), LR 34:1020 (June 2008).

§4909. Comparable/Syngas Fuel Exclusion

A. - D.6....

7. Waste Analysis Plans. The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan that describes the procedures for sampling and analysis of the hazardous waste to be excluded. The plan shall be followed and retained at the facility excluding the waste.

7.a. - 13. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:489 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:305 (March 2001), LR 28:1010 (May 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 34:644 (April 2008), LR 34:1021 (June 2008).

§4999. Appendices—Appendix A, B, C, D, E, and F

Appendix A. Reserved

Appendix B. Reserved

Appendix C. Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (Method 1310B)

[Note: The EP (Method 1310B) is published in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.]

Appendix D. Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the department to be representative of the waste.

Containerized Liquid Wastes—"COLIWASA."

* * *

Liquid Waste in Pits, Ponds, Lagoons, and Similar Reservoirs—"Pond Sampler."

NOTE: These protocols are described in *Samplers and Sampling Procedures for Hazardous Waste Streams*, EPA 600/2-80-018, January 1980.

Appendix E. - Appendix E.Table 1. ...

Appendix F—Recordkeeping Instructions

A. The recordkeeping provisions of LAC 33:V.4357 specify that an owner or operator must keep a written operating record at his facility. This appendix provides additional instructions for keeping portions of the operating record. See LAC 33:V.4357.B for additional recordkeeping requirements.

B. The following information concerning each hazardous waste received, treated, stored, or disposed of at the facility must be recorded, as it becomes available, and maintained in the operating record until closure of the facility, in the following manner:

1. a description of the waste, identified by its common name and the EPA hazardous waste number(s) from LAC 33:V.Chapter 49 that apply to the waste. The waste description must include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in LAC 33:V.Chapter 49, the description also must include the process that produced it (for example, "solid filter cake from production of [___], EPA Hazardous Waste Number W051"). Each hazardous waste listed in LAC 33:V.4901, and each hazardous waste characteristic defined in LAC 33:V.4903, has a four-digit EPA hazardous waste number assigned to it. This number must be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description must include all applicable EPA hazardous waste numbers;

2. the estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1.

Table 1—Units of Measure

Unit of Measure	Code[1]
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters Per Hour	H
Liters Per Day	V
Short Tons Per Hour	D
Metric Tons Per Hour	W
Short Tons Per Day	N
Metric Tons Per Day	S
Pounds Per Hour	J
Kilograms Per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre-feet	A
Hectares	Q
Hectare-meter	F
Btu's per Hour	I
Pounds	P
Short tons	T
Kilograms	K
Tons	M

[1] Single digit symbols are used here for data processing purposes.

3. the method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal. Use the handling code(s) listed in Table 2 that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

Table 2—Handling Codes for Treatment, Storage, and Disposal Methods	
Handling Code	**Technique**
A. Storage	
S01	Container (barrel, drum, etc.)
S02	Tank
S03	Waste Pile
S04	Surface Impoundment
S05	Drip Pad
S06	Containment Building (Storage)
S99	Other Storage (specify)
B. Treatment	
1. Thermal Treatment	
T06	Liquid injection incinerator
T07	Rotary kiln incinerator
T08	Fluidized bed incinerator
T09	Multiple hearth incinerator
T10	Infrared furnace incinerator
T11	Molten salt destructor
T12	Pyrolysis
T13	Wet air oxidation
T14	Calcination
T15	Microwave discharge
T18	Other (specify)
2. Chemical Treatment	
T19	Absorption mound
T20	Absorption field
T21	Chemical fixation
T22	Chemical oxidation
T23	Chemical precipitation
T24	Chemical reduction
T25	Chlorination
T26	Chlorinolysis
T27	Cyanide destruction
T28	Degradation
T29	Detoxification
T30	Ion exchange
T31	Neutralization
T32	Ozonation
T33	Photolysis
T34	Other (specify)
3. Physical Treatment	
a. Separation of Components	
T35	Centrifugation
T36	Clarification
T37	Coagulation
T38	Decanting
T39	Encapsulation
T40	Filtration
T41	Flocculation
T42	Flotation
T43	Foaming
T44	Sedimentation
T45	Thickening
T46	Ultrafiltration
T47	Other (specify)
b. Removal of Specific Components	
T48	Absorption-molecular sieve
T49	Activated carbon
T50	Blending
T51	Catalysis
T52	Crystallization
T53	Dialysis
T54	Distillation
T55	Electrodialysis
T56	Electrolysis
T57	Evaporation
T58	High gradient magnetic separation
T59	Leaching
T60	Liquid ion exchange
T61	Liquid-liquid extraction
T62	Reverse osmosis
T63	Solvent recovery
T64	Stripping
T65	Sand filter
T66	Other (specify)
4. Biological Treatment	
T67	Activated sludge
T68	Aerobic lagoon
T69	Aerobic tank
T70	Anaerobic tank
T71	Composting
T72	Septic tank
T73	Spray irrigation
T74	Thickening filter
T75	Trickling filter
T76	Waste stabilization pond
T77	Other (specify)
T78-T79	[Reserved]
5. Boilers and Industrial Furnaces	
T80	Boiler
T81	Cement Kiln
T82	Lime Kiln
T83	Aggregate Kiln
T84	Phosphate Kiln
T85	Coke Oven
T86	Blast Furnace
T87	Smelting, Melting, or Refining Furnace
T88	Titanium Dioxide Chloride Process Oxidation Reactor
T89	Methane Reforming Furnace
T90	Pulping Liquor Recovery Furnace
T91	Combustion Device Used in the Recovery of Sulfur Values From Spent Sulfuric Acid
T92	Halogen Acid Furnace
T93	Other Industrial Furnaces Listed in 40 CFR 260.10 (specify)
6. Other Treatment	
T94	Containment Building (Treatment)
C. Disposal	
D79	Underground Injection
D80	Landfill
D81	Land Treatment
D82	Ocean Disposal
D83	Surface Impoundment (to be closed as a landfill)
D99	Other Disposal (specify)
D. Miscellaneous	
X01	Open Burning/Open Detonation
X02	Mechanical Processing
X03	Thermal Unit
X04	Geologic Repository
X99	Other (specify)

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 200), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464

(November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:73 (January 2008), LR 34:1021 (June 2008).

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 1. General Provisions and Definitions

§115. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Liquid Waste—any waste material that is determined to contain free liquids as defined by Method 9095B (Paint Filter Liquids Test), as described in *Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods* (EPA Pub. SW-846), which is incorporated by reference. A suffix of "B" in the method number indicates revision two (the method has been revised twice). Method 9095B is dated November 2004.

* * *

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 Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:1023 (June 2008).

Chapter 30. Appendices

§3005. Groundwater Sampling and Analysis Plan—Appendix C

Groundwater Sampling and Analysis Plan

A. - G. …

Table 1	
Detection Monitoring Parameters	
Common Name[1]	**CAS RN[2]**
Inorganic Constituents	
* * *	
[See prior text in (1) - (15)]	
Organic Constituents	
* * *	
[See prior text in (16) - (62)]	

NOTES:

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

Table 2		
Assessment Monitoring Parameters		
Common Name[1]	**CAS RN[2]**	**Chemical Abstracts Service Index Name[3]**
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
Acetophenone	98-86-2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene; 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a,- hexa-hydro-(1α,4α,4aβ, 5α,8α,8aβ)
Allyl chloride	107-05-1	1-Propene, 3-chloro-
4-Amino-biphenyl	92-67-1	[1,1'-Biphenyl]-4-amine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo[a]anthracene; 1,2-Benzanthracene	56-55-3	Benz[a]anthracene
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene
Benzyl alcohol	100-51-6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro- (1α,2α,3β,4α,5β,6β)-
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro- (1α,2β,3α,4β,5α,6β)-
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro- (1α,2α,3α,4β, 5α,6β)-
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro- (1α,2α,3β,4α,5α,6β)-
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1'- [methylenebis(oxy)]bis[2-chloro-
Bis(2-chloroethyl)ether	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether	108-60-1 See Note 4	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzene-dicarboxylic acid; bis(2-ethylhexyl) ester
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-
Bromodichloromethane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-

Table 2		
Assessment Monitoring Parameters		
Common Name[1]	**CAS RN[2]**	**Chemical Abstracts Service Index Name[3]**
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid; butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	57-74-9 See Note 5	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a- hexahydro-
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4- chlorophenyl)-α-hydroxy-, ethyl ester
p-Chloro-m-cresol	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform	67-66-3	Methane, trichloro-
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol	108-39-4	Phenol, 3-methyl-
o-Cresol	95-48-7	Phenol, 2-methyl-
p-Cresol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1'-(dichloroethenylidene) bis[4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methyl- ethyl)-, S-(2,3-dichloro-2-propenyl) ester
Dibenz[a,h]- anthracene	53-70-3	Dibenz[a,h] anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzene dicarboxylic acid, dibutyl ester
o-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'- dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-(E)-
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78-87-5	Propane, 1,2-dichloro-
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro- 1a,2,2a,3,6,6a,7, 7a-octahydro-, (1aα,2β,2aα,3β,6β,6aα, 7β,7aα)-
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate	60-51-5	Phosphorodithioic acid, O,O-dimethyl-S-[2-(methylamino) -2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4- (phenylazo)-

Table 2		
Assessment Monitoring Parameters		
Common Name[1]	**CAS RN[2]**	**Chemical Abstracts Service Index Name[3]**
7,12-Dimethylbenz[a] anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'- dimethyl-
alpha, & alpha-Dimethylphenethylamine	122-09-8	Benzeneethanamine, αα-dimethyl
2,4-Dimethylphenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl- 4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methyl- propyl)-4,6-dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
Diphenylamine	122-39-4	Benzenamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, O,O-diethyl S- [2-(ethylthio) ethyl]ester
Endosulfan I	959-98-8	6,9-Methano-2,4,3 benzodioxathiepin, 6,7,8,9,10,10-hexachloro -1,5,5a,6,9,9a- hexahydro-,3-oxide, (3α,5aβ,6α,9α,9aβ)-
Endosulfan II	33213-65-9	6,9-Methano-2,4,3 benzodioxathiepin, 6,7,8,9,10,10-hexachloro -1,5,5a,6,9,9a- hexahydro-,3-oxide, (3α,5aα,6β,9β,9aα)-
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3 benzodioxathiepin, 6,7,8,9,10,10-hexachloro -1,5,5a,6,9,9a- hexahydro-,3,3-dioxide
Endrin	72-20-8	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro- 1a,2,2a,3,6,6a, 7,7a-octahydro-, (1aα,2β,2aβ,3α,6α,6aβ, 7β,7aα)-
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]- pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro- (1α,2β,2aβ,4β,4aβ,5β, 6aβ,6bβ,7R*)
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, O-[4-[(dimethyl- amino)-sulfonyl] phenyl]-O,O-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8- heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno [1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro- 1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ,2α,5α,5aβ,6β,6aα)
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone	591-78-6	2-Hexanone
Indeno(1,2,3-cd) pyrene	193-39-5	Indeno[1,2,3-cd] pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-
Isodrin	465-73-6	1,4:5,8-Dimethanonaphthalene, 1,2,3,4, 10,10-hexachloro-1,4,4a,5,8,8a- hexahydro- (1α,4α,4aβ,5β,8β,8aβ)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-tri-methyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H- cyclobuta-[cd] pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6- decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-98-7	2-Propene, nitrile 2-methyl-
Methapyrilene	91-80-5	1,2,Ethanediamine, N,N-dimethyl-N'-2- pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2, trichloroethylidene) bis[4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro- 3-methyl-
Methyl ethyl ketone; MEK	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-

Table 2		
Assessment Monitoring Parameters		
Common Name[1]	**CAS RN[2]**	**Chemical Abstracts Service Index Name[3]**
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol	100-02-7	Phenol, 4-nitro
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2- methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
Polychlorinated biphenyls; PCBs	See Note 6	1,1'-Biphenyl, chloro derivatives
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N- (1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	8001-35-2 See Note 7	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-

Table 2		
Assessment Monitoring Parameters		
Common Name[1]	**CAS RN[2]**	**Chemical Abstracts Service Index Name[3]**
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride	75-01-4	Ethene, chloro-
Xylene (total)	1330-20-7 See Note 8	Benzene, dimethyl-
Zinc	(Total)	Zinc

Notes:

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

[3] CAS index numbers are those used in the 9th Collective Index.

[4] This substance is often called Bis(2-chloroisopropyl) ether, the name that Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2'-oxybis[2-chloro- (CAS RN 39638-32-9).

[5] Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6).

[6] Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5).

[7] Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

[8] Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

DECISION TREE DIAGRAM. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1109 (June 2007), LR 34:1023 (June 2008).

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Executive Counsel

0806#021

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Terms and Conditions of Licenses
(LAC 33:XV.326)(RP049ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.326 (Log #RP049ft).

This Rule is identical to federal regulations found in 10 CFR 30.34, 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 Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule will update the state regulations to be compatible with the changes in the federal regulations. The change in the state regulations is a category C (recommended to do) requirement of the NRC agreement. The federal "Terms and Conditions of Licenses" requirements are listed in 10 CFR 30.34. This Rule includes regulations to prevent radioactive material in gauges from unauthorized removal when not in use or not attended, such as when in storage or in transport. This is a security requirement for portable gauges containing radioactive material. The basis and rationale for this Rule are to be compatible with the federal regulations and maintain an adequate Agreement State program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection

Chapter 3. Licensing of Radioactive Material

Subchapter D. Specific Licenses

§326. Special Requirements for Issuance of Certain Specific Licenses for Radioactive Material

A. - A.8. …

B. Security Requirements for Portable Gauges. Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

C. - E.1.k. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 27:1228 (August 2001), LR 30:1188 (June 2004), amended by the Office of

Environmental Assessment, LR 31:45 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2525 (October 2005), LR 33:2178 (October 2007), LR 34:1027 (June 2008).

Herman Robinson, CPM
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0806#010

RULE

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)

Editor's Note: This Rule is being repromulgated to correct a typographical error. The original Rule can be viewed in its entirety on pages 2364-2418 of the November 20, 2007 *Louisiana Register*.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the 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 appliers 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 certain provisions of Emergency Rule OS066E7 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 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.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
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. - H.7.…

8. Treatment Processes. This Chapter does not establish requirements for processes used to treat *domestic sewage*, as defined in Subsection B of this Section, or for processes used to treat sewage sludge prior to final use or disposal, except as provided in LAC 33:IX.7309.

H.9. - I.2.k. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2366 (November 2007), repromulgated LR 34:1028 (June 2008).

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Executive Counsel

0816#012

RULE

Department of Health and Hospitals
Board of Veterinary Medicine

Student/Shelters and Faculty Veterinarian
(LAC 46:LXXXV.714)

The Louisiana Board of Veterinary Medicine amends LAC 46:LXXXV.714 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1569. This text is being amended to establish the requirements for a qualified student at LSU-SVM to perform limited duties in a support capacity, at approved shelters on shelter animals only, under the direct supervision of faculty veterinarians licensed with the board. It is the primary purpose of this Rule to identify the limitations of the student's duties and restrict the student from entering the realm of veterinary medical practice for which a license is required by law after the successful completion of competency requirements. It also holds the supervising faculty veterinarians licensed with the board accountable for the students under their charge.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXXXV. Veterinarians
Chapter 7. Veterinary Practice
§714. Student/Shelters and Faculty Veterinarian

A. A person who is a regular student in an accredited veterinary school who is performing duties or actions assigned by his instructors as part of his curriculum under the direct supervision of a faculty veterinarian who is licensed by the board; however, the student's role shall be limited to assisting the licensed faculty veterinarian in a support capacity during assessment, diagnosis, treatment, and surgery in the shelters pre-approved by the board on shelter animals only. For example, observation of procedures and services by the student and the performance of menial support tasks to assist the licensed faculty veterinarian are legally permissible. However, the licensed faculty veterinarian must be the primary veterinarian, or surgeon of record, in all situations. To allow the student to perform beyond the support capacity as defined in this rule would, in effect, permit the student to enter into the realm of veterinary practice without first having to meet the requirements necessary to have a license as established by the Louisiana Veterinary Practice Act and the Louisiana Board of Veterinary Medicine rules.

B. Direct supervision is defined as "continuous, visual, and on-site supervision" which shall only be performed by a faculty veterinarian licensed by, and accountable to, the Louisiana Board of Veterinary Medicine as per its regulatory authority. Accordingly, the licensed faculty veterinarian and the program shall comply with all requirements established by the Veterinary Practice Act and the board's rules regarding the practice of veterinary medicine including, but not limited to, such practice standards as a proper surgical facility, record keeping, aftercare, prescriptions, drug/device maintenance, etc. The faculty veterinarian as a licensed veterinarian shall be ultimately responsible, and accountable to the board, for the duties, actions, or work performed by the student; however, at no time shall the student's role extend beyond assisting the licensed faculty veterinarian in a support capacity during assessment, diagnosis, treatment, and surgery in the shelters pre-approved by the board on shelter animals only.

C. The tasks assigned to a student is at the discretion of the supervising faculty veterinarian licensed by the board who shall be ultimately responsible and held accountable by the board for the duties, actions, or work performed by the student, however, at no time shall the student's role extend beyond assisting the licensed faculty veterinarian in a support capacity during assessment, diagnosis, treatment, and surgery. In addition, the tasks assigned to the student shall encompass the care, treatment, and/or surgery of one shelter animal at a time at a shelter pre-approved by the board. Again, the licensed faculty veterinarian must be the primary veterinarian, or surgeon of record, in each individual situation.

D. Prior to commencement of a student's participation in a program, the supervising faculty veterinarian licensed by the board must first notify the board of such on board approved forms.

E. A student shall not be permitted to perform supervision of any nature, as defined in §§ 700 and 702, of the tasks or procedures performed by other personnel of the shelter at issue.

F. The duties, actions or work performed by a student shall not be considered a component of, nor applied to, the requirements regarding the preceptorship program established by the board. The period of time necessary to satisfactorily complete a preceptorship program shall not run concurrently with the period of time a student performs or works as such.

G. A student extern who is working during a school vacation for a licensed veterinarian shall be under continuous, visual, and on site supervision of a veterinarian licensed by the board. The supervising veterinarian shall be ultimately responsible and held accountable by the board for the duties, actions, or work performed by such person; however, at no time shall the student's role extend beyond observing the supervising veterinarian in a support capacity during assessment, diagnosis, treatment, and surgery. The student extern shall not perform supervision of any nature, as defined in §§700 and 702, of the tasks or procedures performed by other personnel of the facility at issue. Furthermore, the duties, actions or work performed by the student extern shall not be considered a component of, nor applied to, the requirements regarding the preceptorship program, nor shall it run concurrently with, or be any part of the board's preceptorship program requirements

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 29:1479 (August 2003), amended LR 34:1029 (June 2008).

Wendy D. Parrish
Administrative Director

0806#001

RULE

Department of Health and Hospitals
Office of Aging and Adult Services

Home and Community Based Services Waivers
Elderly and Disabled Adult Waiver
(LAC 50:XXI.Chapters 81 and 85)

The Department of Health and Hospitals, Office of Aging and Adult Services has amended LAC 50:XXI.Chapters 81 and 85 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waiver
Subpart 7. Elderly and Disabled Adults Waiver
Chapter 81. General Provisions
§8101. Introduction

A. The target population for the Elderly and Disabled Adult (EDA) Waiver Program includes individuals who:

1. are 65 years of age or older; and

2. 21-64 years of age and disabled according to Medicaid standards or the Social Security Administration's disability criteria; and

3. meet nursing facility level of care requirements.

B. …

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 Community Supports and Services, LR 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1029 (June 2008).

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry", for the Elderly and Disabled Adult Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the EDA Waiver registry shall be screened to determine whether they meet nursing facility level of care. Only individuals who meet this criterion will be added to the registry.

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 Community Supports and Services, LR 28:835 (April 2002), amended LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008).

§8105. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new EDA Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible EDA Waiver opportunity assignment.

B. EDA Waiver opportunities are offered based on the date of first request for services, with priority given to individuals who are in a nursing facility, but could return to their home if EDA Waiver services are provided. Priority shall also be given to those individuals who have indicated that they are at imminent risk of nursing facility placement.

1. An individual is considered to be at imminent risk of nursing facility placement when he or she:

a. is likely to require admission to a nursing facility within the next 120 days;

b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or

c. has a primary caregiver who has a disability or is age 70 or older.

C. One hundred and fifty EDA Waiver opportunities are reserved for qualifying individuals who have been diagnosed with Amyotrophic Lateral Sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

D. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

E. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:42 (January 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008).

Chapter 85. Admission and Discharge Criteria

§8501. Admission Criteria

A. - A.2. …

3. justification, as documented in the approved CPOC, that the EDA Waiver services are appropriate, cost effective and represent the least restrictive environment for the individual; and

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of EDA Waiver services.

5. Repealed.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §8501.A. will result in denial of admission to the EDA Waiver.

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 Community Supports and Services LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008).

§8503. Denial or Discharge Criteria

A. Admission shall be denied or the recipient shall be discharged from the EDA Waiver Program if any of the following conditions are determined.

1. - 2. …

3. The recipient resides in another state or has a change of residence to another state.

4. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing EDA Waiver services (exclusive of support coordination services) for a period of 30 consecutive days.

5. The health, safety and welfare of the individual cannot be assured through the provision of EDA Waiver services within the individual's cost effectiveness.

6. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

7. Failure on behalf of the individual to maintain a safe and legal home environment.

8. It is not cost effective to serve the individual in the EDA Waiver.

9. - 10. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:42 (January 1998); amended LR 24:457 (March 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#061

RULE

Department of Health and Hospitals
Office of Aging and Adult Services

Home and Community Based Services Waivers
Elderly and Disabled Adults Waiver
Adult Day Health Care Services
(LAC 50:XXI.8301)

The Department of Health and Hospitals, Office of Aging and Adult Services has amended LAC 50:XXI.8301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 7. Elderly and Disabled Adult Waiver
Chapter 83. Services
§8301. Service Descriptions

A. - A.6.a. ...

7. Adult Day Health Care (ADHC). ADHC services are a planned, diverse daily program of individual services and group activities structured to enhance the recipient's physical functioning and to provide mental stimulation. Services are furnished for five or more hours per day (exclusive of transportation time to and from the ADHC facility) on a regularly scheduled basis for one or more days per week, or as specified in the plan of care. An adult day health care facility shall, at a minimum, furnish the following services:

a. individualized training or assistance with the activities of daily living (toileting, grooming, eating, ambulation, etc.);

b. health and nutrition counseling;

c. an individualized, daily exercise program;

d. an individualized, goal directed recreation program;

e. daily health education;

f. medical care management;

g. one nutritionally balanced hot meal and two snacks served each day;

h. nursing services that include the following individualized health services:

i. monitoring vital signs appropriate to the diagnosis and medication regimen of each recipient no less frequently than monthly;

ii. administering medications and treatments in accordance with physicians' orders;

iii. monitoring self-administration of medications while the recipient is at the ADHC facility; and

NOTE: All nursing services shall be provided in accordance with acceptable professional practice standards.

iv. transportation to and from the facility.

NOTE: If transportation services that are prescribed in any individual's approved CPOC are not provided by the ADHC facility, the facility's reimbursement rate shall be reduced accordingly.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:42 (January 1998), repromulgated LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services LR 34:1031 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#062

RULE

Department of Health and Hospitals
Office of Aging and Adult Services

Nursing Facilities—Standards for Payment
Level of Care Determination
(LAC 50:II.10154)

The Department of Health and Hospitals, Office of Aging and Adult Services has amended LAC 50:II.10154 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Medical Assistance Program
Subpart 3. Standards for Payment
Chapter 101. Standards for Payment for Nursing Facilities
Subchapter G. Levels of Care
§10154. Determination of Nursing Facility Level of Care

A. …

B. Definition of Nursing Facility Level of Care. The nursing facility level of care determination is based on the Resource Utilization Groups III (RUG-III) case mix system used in the Medicare Program and at least half of all state Medicaid programs. RUG-III is a patient classification system that measures for the relative resource utilization of different nursing facility patient types (*Federal Register*, Volume 63, Number 91 [May 12, 1998]). It is utilized to ensure consistency, uniformity, and reliability in making nursing facility level of care determinations.

1. RUG-III assigns each nursing facility resident to one of 44 distinct classification groups, based on the characteristics of the resident as assessed in the Nursing Home Minimum Data Set (MDS), so as to predict the resources expected to be used to meet the resident's functional support requirements and medical needs. The Long Term Care Resident Assessment Instrument User's Manual for the MDS explains how resident characteristics are used to assign an individual to a RUG-III classification.

2. Medicare presumes that individuals assigned to the upper 26 of 44 RUG-III classification groups meet the skilled nursing facility level of care definition set forth in federal law. However, states have the discretion to establish their own definitions of nursing facility level of care for purposes of the Medicaid Program.

3. Louisiana defines nursing facility level of care for Medicaid eligible individuals as the care required by individuals with needs greater than those identified by the lowest of the RUG-III classification groups (i.e., Physical Function Reduced Group A, with or without rehabilitation, also known as PA1 and PA2). Individuals determined to be in any of the upper 42 of 44 RUG-III classification groups meet the level of care for nursing facility admission and/or continued stay for the purposes of the Louisiana Medicaid Program.

C. Level of Care Determination. The Level of Care Evaluation Tool (LOCET) is used to assess whether an individual may meet the nursing facility level of care. The LOCET is derived from selected information in the Minimum Data Set (MDS), which is the standardized assessment tool used by Medicare to assign nursing facility residents to a RUG-III classification group. Consistent with the standard of nursing facility level of care defined in Paragraph B, the MDS data elements included in LOCET are those necessary to determine whether an individual would be assigned to a RUG-III category other than PA1 or PA2. To make this assessment, LOCET questions address the individual's need for assistance with the activities of daily living; cognitive function; skilled rehabilitative services; physician involvement; behavior; and certain treatment and conditions.

1. The LOCET information must be provided by the applicant or someone who is sufficiently familiar with the applicant to be able to provide all required information completely and accurately.

2. If on an audit review or other subsequent face-to-face interview, the LOCET findings are determined to be incorrect, the audit or subsequent face-to-face interview findings will prevail.

D. Service Dependency. Individuals who were approved for services prior to December 1, 2006, and who require continued ongoing services to maintain current functional status are deemed to meet the definition set forth in Paragraph B for purposes of continued eligibility for those services.

E. Supporting Documentation. As directed by the department, applicants may be required to submit documentation necessary to support the determination of nursing facility level of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:2082 (November 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1032 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#063

RULE

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

Early and Periodic Screening, Diagnosis and Treatment
Dental Program—Reimbursement Rate Increase
(LAC 50:XV.6905)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 50:XV.6905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening, Diagnosis and Treatment
Chapter 69. Dental
§6905. Reimbursement

A. - A.2. …

B. Effective for dates of service on and after November 1, 2007, the reimbursement fees for dental services are increased to 65 percent of the 2007 National Dental Advisory Service Comprehensive Fee Report 70th percentile rate unless otherwise stated in this Chapter.

1.-3. Repealed.

C. Designated procedures in the following dental services categories are excluded from the rate increase. The reimbursement fees for these procedures shall continue to be the fee on file in the EPSDT Dental Program Fee Schedule as of October 31, 2007:

1. diagnostic services;
2. preventive services;
3. restorative services;
4. endodontic services;
5. periodontic services;
6. removable and fixed prosthodontic services;
7. oral and maxillofacial surgery services;
8. orthodontic services; and
9. adjunctive general services.

10.-12. Repealed.

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 33:1138 (June 2007), amended LR 34:1032 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#060

RULE

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

Federally Qualified Health Centers
Reimbursement Methodology
Payment for Adjunct Services (LAC 50:XI.10703)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:XI.10703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 13. Federally Qualified Health Centers
Chapter 107. Reimbursement Methodology
§10703. Alternate Payment Methodology

A. Effective for dates of service on or after October 20, 2007, the Medicaid Program establishes an alternate payment methodology for adjunct services provided by federally qualified health centers (FQHCs) when these professional services are rendered during evening, weekend or holiday hours. This alternate payment methodology is in addition to the Prospective Payment System methodology established for FQHC services.

1. A payment for adjunct services is not allowed when the encounter is for dental services only.

B. The reimbursement for adjunct services is a flat fee, based on the Current Procedural Terminology (CPT) procedure code, in addition to the reimbursement for the associated office encounter.

C. Reimbursement is limited to services rendered between the hours of 5 p.m. and 8 a.m. Monday through Friday, on weekends and state legal holidays. Documentation relative to this reimbursement must include the time that the services were rendered.

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 34:1033 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#067

RULE

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

Nursing Facilities—Reimbursement Methodology
Fair Rental Value, Property Tax and
Property Insurance Incentive Payments
(LAC 50:VII.1312)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 50:VII.1312 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care Services
Subpart 1. Nursing Facilities
Chapter 13. Reimbursement
§1312. Fair Rental Value, Property Tax and Property Insurance Incentive Payments to Buyers of Nursing Facilities

A. On or after July 20, 2007, a Louisiana Medicaid participating nursing facility [buyer(s)] that purchases and closes an existing Louisiana Medicaid participating nursing facility (seller) will be eligible to receive fair rental value, property tax and property insurance incentive payments for five years after the legal transfer of ownership and closure of the seller's nursing facility.

B. Qualifying Buyer(s). In order for the buying facility to qualify for the incentive payments described in this Section, the following conditions must be met.

1. Buyer(s) must purchase and close a Medicaid-certified nursing facility within 90 days after the legal transfer of ownership from the seller to buyer(s).

2. After closing the facility, all buyer(s) must permanently surrender their interest in the seller's bed license and the Facility Need Review bed approvals to the state.

3. The buyer(s) must be a Medicaid-certified nursing facility operator(s) at the time of purchase and continue their Medicaid participation throughout the entire five year payment period. A change in ownership of a buyer facility will not be considered a break in Medicaid participation provided the new owner of the nursing facility continues participation in the Medicaid Program as a Medicaid-certified nursing facility.

a. Repealed.

4. The buyer(s) must provide the following documentation to the secretary of the department, in writing, within 30 days after the legal transfer of ownership:

a. a list of all buyer(s);

b. a list of all seller(s);

c. the date of the legal transfer of ownership;

d. each buyer's percentage share of the purchased facility; and

e. each buyer's current nursing facility resident listing and total occupancy calculations as of the date of the legal transfer of ownership.

5. The buyer(s) must provide the following documentation to the secretary of the department, in writing, within 110 days after the legal transfer of ownership:

a. a list of the nursing facility residents that transferred from the seller facility and were residents of the buyer facility as of 90 days after the legal transfer of ownership date. The nursing facility resident list must include the payer source for each resident;

b. the date that the seller's facility was officially closed and no longer operating as a nursing facility.

C. Incentive Calculation. The total annual Medicaid incentive payment for each transaction will be based on the number of beds surrendered from the closed facility and the cumulative percentage increase in occupancy for all buyers involved in the purchase.

1. Beds surrendered will be based on the licensed beds surrendered for the closed facility. The number of beds surrendered will determine the base capital amount used in the incentive payment calculation as follows.

a. Under 115 beds surrendered will result in a base capital amount of $303,216.

b. 115 through 144 beds surrendered will result in a base capital amount of $424,473.

c. 145 beds or more surrendered will result in a base capital amount of $597,591.

2. The cumulative increase in total nursing facility occupancy for all buyers involved in the transaction will be calculated based on the total occupancy reported for all buyers at the purchase date as required by §1312.B.4.e and the reported increase in total residents received from the seller as required by §1312.B.5.a.

a. Cumulative occupancy increases for all buyers will determine the percentage of the base capital amount used in the incentive payment calculation as follows:

i. less than 5.00 percent will result in 67 percent of the base capital amount;

ii. 5.00 percent through 9.99 percent will result in 78 percent of the base capital amount;

iii. 10.00 percent through 14.99 percent will result in 89 percent of the base capital amount;

iv. 15.00 percent and up will result in 100 percent of the base capital amount.

3. Annual Medicaid Incentive Payment Calculation. The payment amount that corresponds to the cumulative occupancy increase for all buyers and the number of beds surrendered will be multiplied by each buyer's percentage share in the transaction as reported in accordance with §1312.B.4.d. The result will be each buyer's total annual Medicaid incentive payment for five years.

a. Repealed.

b. Repealed.

c. Repealed.

4. Base Capital Amount Updates. On July 1 of each year, the base capital amounts (as defined in §1312.C.1) will be trended forward annually to the midpoint of the rate year using the change in the per diem unit cost listed in the three-fourths column of the R.S. Means Building Construction Data Publication, adjusted by the weighted average total city cost index for New Orleans, Louisiana. The cost index for the midpoint of the rate year shall be estimated using a two-year moving average of the two most recent indices as provided in this Subparagraph. Adjustments to the base capital amount will only be applied to purchase and closure transactions occurring after the adjustment date.

D. Re-Base of Buyers' Fair Rental Value, Property Tax, and Property Insurance per Diems. All buyers will have their fair rental value, property tax, and property insurance per diems re-based using the number of residents reported by each buyer as required by §1312.B.5.a. The re-base will be retroactive to the date of closure of the purchased facility. The calculation will be as follows.

1. Prior to application of the minimum occupancy calculation, the actual number of total resident days used in the calculation of each buyer's current fair rental value per diem as described in §1305.D.3.b.iii will be increased by the number of residents the buyer reported under §1312.B.5.a multiplied by the total number of current rate year days.

2. The number of total resident days used in the calculation of each buyer's current pass through property tax and insurance per diem as described under §1305.D.4.a will be increased by the number of residents the buyer reported under §1312.B.5.a multiplied by the number of calendar days included in the buyer's most recent base-year cost report.

3. The resident day adjustment to each buyer's fair rental value, property tax, and property insurance per diem will continue until the buyer's base-year cost report, as defined under §1305.B, includes a full 12 months of resident day data following the closure of the acquired facility (seller). If a buyer's base year cost report overlaps the closure date of the acquired facility, a proportional adjustment to that buyer's resident days will be made for use in the fair rental value, property tax, and property insurance per diem calculations.

E. Payments

1. The fair rental value, property tax and property insurance incentive payment will be paid to the buyer(s) as part of their Medicaid per diem for current services billed over five years (20 quarters), effective the beginning of the calendar quarter following the closure of the seller's facility

and the surrender of the seller's licensed beds to the department. The per diem will be calculated as the buyer's annual Medicaid incentive payment as defined under §1312.C.3 divided by annual Medicaid days. Annual Medicaid days will be equal to Medicaid residents transferred from the seller facility, as determined under §1312.B.5.a, multiplied by total current rate year days plus the buyer's annualized Medicaid days from the most recent base year cost report. If the most recent base year cost report includes or overlaps the period of the transfer, an adjustment will be made to avoid including the transferred days twice.

2. The revised fair rental value per diem and revised property tax and insurance per diem for the buyer(s) will be effective the first day of the month following the closure of the acquired facility (seller).

3. The incentive per diems, the revised fair rental value per diem, and revised property tax and insurance per diem will be updated at every case-mix rebase effective date.

4. The incentive payments when combined with all other Medicaid nursing facility payments shall not exceed the Medicare upper payment limit.

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 33:1349 (July 2007), amended LR 34:1033 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#064

RULE

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

Professional Services Program—Adult Immunizations
(LAC 50:IX.Chapters 83-87)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:IX.Chapters 83-87 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 7. Immunizations
Chapter 83. Children's Immunizations (Reserved)
Chapter 85. Adult Immunizations
§8501. General Provisions

A. Effective October 1, 2007, the department shall provide Medicaid coverage for certain immunizations administered by enrolled Medicaid providers to adult recipients, age 21 or older. Adult immunizations shall be covered for the following diseases:

1. influenza;
2. pneumococcal; and
3. human papillomavirus (HPV).

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 34:1035 (June 2008).

§8503. Coverage Restrictions

A. HPV Immunizations. Immunizations for HPV are restricted to female recipients from age 21 through 26 years old.

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 34:1035 (June 2008).

Chapter 87. Reimbursement
§8701. Reimbursement Methodology

A. Adult Immunizations. Providers shall be reimbursed according to the established fee schedule for the vaccine and the administration of the vaccine.

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 34:1035 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#065

RULE

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

Professional Services Program
Physicians Services—Payment for Adjunct Services
(LAC 50:IX.15121)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:IX.15121 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 15. Reimbursement
Chapter 151. Reimbursement Methodology
§15121. Payment for Adjunct Services

A. Effective for dates of service on or after October 20, 2007, the Medicaid Program shall provide reimbursement

for the payment of adjunct services in addition to the reimbursement for evaluation and management services and the associated ancillary services when these professional services are rendered in settings other than hospital emergency departments during evening, weekend or holiday hours.

B. The reimbursement for adjunct services is a flat fee, based on the Current Procedural Terminology (CPT) procedure code, in addition to the reimbursement for the associated evaluation and management services and associated ancillary services.

C. Reimbursement is limited to services rendered between the hours of 5 p.m. and 8 a.m. Monday through Friday, on weekends and state legal holidays. Documentation relative to this reimbursement must include the time that the services were rendered.

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 34:1035 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#066

RULE

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

Rural Health Clinics—Reimbursement Methodology
Payment for Adjunct Services
(LAC 50:XI.16703)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:XI.16703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 15. Rural Health Clinics
Chapter 167. Reimbursement Methodology
§16703. Alternate Payment Methodology

A. Effective for dates of service on or after October 20, 2007, the Medicaid Program establishes an alternate payment methodology for adjunct services provided by rural health clinics (RHCs) when these professional services are rendered during evening, weekend or holiday hours. This alternate payment methodology is in addition to the Prospective Payment System methodology established for RHC services.

1. A payment for adjunct services is not allowed when the encounter is for dental services only.

B. The reimbursement for adjunct services is a flat fee, based on the Current Procedural Terminology (CPT) procedure code, in addition to the reimbursement for the associated office encounter.

C. Reimbursement is limited to services rendered between the hours of 5 p.m. and 8 a.m. Monday through Friday, on weekends and state legal holidays. Documentation relative to this reimbursement must include the time that the services were rendered.

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 34:1036 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#068

RULE

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

Targeted Case Management
Nurse Family Partnership Program
(LAC 50:XV.11101 and 11103)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 50.XV.11101 and 11103 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 7. Targeted Case Management
Chapter 111. Nurse Family Partnership Program
§11101. Introduction

A. Nurse Family Partnership (NFP) targeted case management is a prenatal program designed to improve the health and social functioning of Medicaid eligible first-time mothers and their babies.

B. …

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 Community Supports and Services LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 34:1036 (June 2008).

§11103. Recipient Qualifications

A. A Medicaid recipient must not be beyond the twenty-eighth week of pregnancy and must attest that she meets one of the following definitions of a first-time mother in order to receive NFP case management services. The recipient:

A.1. - B.3. …

C. Nurse Family Partnership case management services to the mother may continue up to two years after the birth of the child.

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 Community Supports and Services LR 30:1041 (May 2004), amended LR 31:2028 (August 2005), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 34:1037 (June 2008).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission for review and approval is required.

Alan Levine
Secretary

0806#069

RULE

Department of Public Safety and Corrections
Gaming Control Board

Application and License (LAC 42:XI.2405)

The Louisiana Gaming Control Board has amended LAC 42:XI.2405 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 XI. Video Poker
Chapter 24. Video Draw Poker
§2405. Application and License

A. Initial and Renewal Applications

1. - 4. ...

5.a. Except as otherwise provided in this Subsection, all licensed establishment applications submitted to the division shall be for an existing and operating business.

b. An entity that intends to build a truck stop facility and apply for a Type V video gaming license and has applied with the local governing authority of the parish where the truck stop is to be located for a certificate of compliance with applicable zoning ordinances and building codes and a statement of approval for the operation of video draw poker devices at a truck stop facility as required by R.S. 27:324(C); has applied with the appropriate authority for a building permit; and has published the public notices required by R.S. 27:306(A)(6), may submit an application of intent to build a truck stop facility on a form prescribed by the division which shall include:

i. a certificate of compliance with applicable zoning ordinances and a statement of approval of the operation of video poker devices from the applicable local governing authority or a statement that local approval is not required;

ii. proof of application for a building permit has been filed with the appropriate governing authority;

iii. proof of publication of the notice of intent to build a qualified truck stop facility as required by R.S. 27:306(A)(6)(a);

iv. proof of issuance of the press release required by R.S. 27:306 (A)(6)(d); and

v. a plat showing the location of the truck stop facility and the surrounding area identifying schools, churches, playgrounds, synagogues, public libraries and buildings on the National Historic Registry.

c. Upon completion of the truck stop facility and commencement of operations, an applicant for a Type V license shall submit all other application forms and fees required by the board. Upon submission of these forms and fees and a determination that the submission is complete, the division may commence its investigation of the facility and all persons required to meet suitability.

d. For purposes of determining compliance with the distance requirements provided in R.S. 27:306(C)(2), the date of application shall be the date the certificate of compliance was received from the applicable local governing authority or the date the application for a building permit was filed, whichever last occurred.

A.6. - D.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:955 (May 1998), LR 26:346 (February 2000), LR 26:2322 (October 2000), LR 27:61 (January 2001), LR 29:362 (March 2003), LR 30:267 (February 2004), repromulgated LR 30:439 (March 2004), amended LR 34:1037 (June 2008).

H. Charles Gaudin
Chairman

0806#005

RULE

Department of Public Safety and Corrections
Office of State Police

Explosive Code (LAC 55.I.1511 and 1531)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 40:1472.1 et seq., hereby amends its rules regulating explosives to incorporate legislative changes with regard to the necessity of obtaining an explosives license to handle explosives, and to adopt federal standards with regard to the construction of magazines.

Title 55
PUBLIC SAFETY
Part I. State Police
Chapter 15. Explosive Code
Subchapter A. General
§1511. Magazine Construction Requirements

A. - D. …

E. Magazines constructed according to the following minimum specifications are approved as bullet-resistant and fire-resistant.

1. Exterior Construction

a. The exterior and doors are to be constructed of not less than 1/4 inch steel and lined with at least 2 inches of hardwood. Magazines with top openings will have lids with water-resistant seals or which overlap the sides by at least 1 inch when in a closed position.

2. General

a. Outdoor magazines (Types 1 and 2) are to be bullet-resistant, fire-resistant, weather-resistant, theft-resistant and ventilated. They are to be supported to prevent direct contact with the ground and, if less than one cubic yard in size, must be securely fastened to a fixed object. The ground around outdoor magazines must slope away for drainage or other adequate drainage provided. When unattended, vehicular magazines must have wheels removed or otherwise effectively immobilized by kingpin locking devices or other methods approved by the director.

F. …

G. Magazines shall be constructed in accordance with the rules and regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives, 27 Code of Federal Regulations Parts 555.207, 555.208, 555.209, 555.210 and 555.211.

> Types 1,2,3, or 4 magazines shall be constructed with a lattice, paint, mastic, or equivalent lining, to prevent contact of explosive materials with masonry walls or ferrous metal.

H.- O.9. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:105 (January 1998), amended by the Department of Public Safety and Corrections, Office of State Police, LR 26:91 (January 2000), LR 34:1037 (June 2008).

§1531. General Requirements

A. The handling of explosives shall be performed only by a person holding a valid and subsisting license to use explosives.

B. It is a violation of this Chapter for any person to engage in handling, touching, moving, etc., of explosives or to engage in the business of a manufacturer-distributor or dealer in explosives, or to acquire, sell, possess, store, or engage in the use of explosives in this state, unless that person possesses an appropriate license issued by the Deputy Secretary of Public Safety Services. Licensed geophysical contractors may contract with licensed drilling contractors to possess and use explosives for the sole purpose of executing the contract between the two parties. All explosives shall be returned to the licensed geophysical contractor at the end of each day. For purposes of this Section, the transfer of the temporary possession of explosives between the contracting parties shall not constitute a sale. The safety and security of the explosives and the compliance with these regulations shall be the responsibility of the party to the contract who is in possession of the explosives. There shall be no requirement that the drilling contractor be licensed by each geophysical contractor with whom he contracts.

C. - O. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:106 (January 1998), amended by the Department of Public Safety and Corrections, Office of State Police, LR 26:91 (January 2000), LR 34:1038 (June 2008).

Jill Boudreaux
Undersecretary

0806#033

RULE

Department of Social Services
Office of Rehabilitation Services

Individual's Participation in the Cost
of Vocational Rehabilitation Services
(LAC 67:VII.115)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) has amended §115, Financial, of its Vocational Rehabilitation Policy Manual. In §115, Financial, the agency redefined financial participation for the provision of hearing aids and placed it under a financial needs test.

Title 67
SOCIAL SERVICES
Part VII. Rehabilitation Services
Chapter 1. General Provisions
§115. Financial

A. - A.1.c.i.(f). …

B. Individual's Participation in the Cost of Vocational Rehabilitation Services

1. - 2. …

a. Neither a financial needs test, nor a budgetary analysis is applied and no financial participation is required as a condition for furnishing the following vocational rehabilitation services:

i. - ix. …

x. assistive technology devices and services (except hearing aids);

xi. …

b. A financial need analysis will be applied to determine the ability of the individual to financially contribute to the cost of the following vocational rehabilitation services:

i. physical restoration and/or mental restoration;
ii. hearing aids;
iii. maintenance;
iv. transportation;
v. books and supplies;
vi. occupational tools and equipment;
vii. cost services to other family members;
viii. occupational licenses;
ix. discretionary training fees such as car registration fees, student health service fees, etc. not included in tuition;

x. vocational and other training services, such as college/university, vocational and proprietary school training;

xi. other goods and services, not specifically identified in Subparagraph d below;

xii. post employment services consisting of the services listed above.

c. The only exception to Clause x above is as follows.

i. To preserve LRS' Continuity of Services provision in the Order of Selection, LRS exempted those eligible individuals who had an IWRP/IPE in effect prior to July 20, 1999, which is the date of the adoption of this rule change; therefore, Clause x in Subparagraph b above will only apply to those individuals who had an IWRP/IPE developed after July 20, 1999.

d. - g. …

h. Simultaneously with the comprehensive assessment, at the annual review of the IPE, and at any time there is a change in the financial situation of either the client or the family, the counselor will perform a budget analysis for each client requiring vocational rehabilitation services as listed above in §115.B.2.b.i-xii. The amount of client participation in the cost of their vocational rehabilitation program will be based upon the most recent budget analysis at the time the relevant IPE or amendment is developed.

B.3. - C. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:837 (August 1995), LR 24:959 (May 1998), LR 25:1273 (July 1999), LR 27:212 (February 2001), LR 27:1561 (September 2001), LR 29:47 (January 2003), LR 30:1488 (July 2004), LR 34:1038 (June 2008).

Ann Silverburg Williamson
Secretary

0806#053

RULE

Department of Transportation and Development
Office of Public Works

Port Construction and Development Priority Program
(LAC 56:III.Chapter 21)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development hereby amends Chapter 21 of Subpart 2 of Part III of Title 56 entitled "Louisiana Port Construction and Development Priority Program," in accordance with the provisions of R.S. 34:3451-3463.

Title 56
PUBLIC WORKS
Part III. Flood Control and Water Management
Subpart 2. Port Construction and Development Priority Program
Chapter 21. Louisiana Port Construction and Development Priority Program

§2101. Definitions
[Formerly §2103]

Committee—Joint Legislative Committee on Transportation, Highways and Public Works.

Council—Legislative Audit Advisory Council.

Deep Draft Port—a port capable of accommodating vessels of at least 25 feet of draft and of engaging in foreign commerce.

Department—the Louisiana Department of Transportation and Development.

Joint Legislative Committee—see *Committee*.

Port—a harbor town or city where ships may take on or discharge cargo.

Port Authority—the governing body of any port area or port, harbor, and terminal district.

Procedural Manual—a manual entitled, Louisiana Port Construction and Development Priority Program Procedural Manual for Funded Projects, which is used to implement projects funded by the program.

Program—Louisiana Port Construction and Development Priority Program.

Project—that activity that derives benefits to the state after an investment of program and port funds. The port funds may include federal monies.

Project Agreement—the agreement between the department and port authority that states the authorities and responsibilities of each party in implementing a project that is funded in part by the Louisiana Port Construction and Development Program. The format is as shown in the procedural manual.

Shallow Draft Port—a port that is not capable of accommodating vessels of 25 feet of draft or is not engaged in foreign commerce.

Total Project—that activity that derives benefits to the state after an investment of program, port, and other public and private funds.

Transportation Trust Fund—a fund created by a constitutional amendment passed by the voters on October 7, 1989 which dedicated $16 of the gasoline/motor fuel tax to construction and maintenance of state and federal highways and bridges, statewide flood control, ports, airports, transit, state police for traffic control, and parish roads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 17:274 (March 1991), amended LR 18:750 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), LR 34:1039 (June 2008).

§2103. Creation of Priority Program [Formerly §2101]

A. Creation of Priority Program

1. The Louisiana Port Construction and Development Priority Program was created by Act 452 of the 1989 Regular Session. Before this program, the state funded ports projects through the Capital Outlay Program without requiring any feasibility studies. From 1977 to 1984 Louisiana expended more funds for ports than any other state in the union. For this period Louisiana spent $25,985,000 on shallow draft ports and $173,424,000 on deep draft ports for a total of $199,409,000.[1]

2. The creation of the Port Construction and Development Priority Program changed the method by which Louisiana participated in port improvements. The feasibility of proposed port projects must now be determined and the projects must be prioritized. The source of state funds for the Louisiana Port Construction and Development Priority Program is the Transportation Trust Fund. Revenue accrues to the Transportation Trust Fund through the collection of taxes placed on the sale of gasoline.

3. In general, the purpose of a priority program is to disburse funds to projects that have the highest prospects of success as determined by objective standards such as technical and financial feasibility and overall impacts. A priority program also defines the standards by which these projects are evaluated and provides the mechanisms to conduct the evaluation according to an accepted methodology. Moreover, a priority program's application process may serve as a means to determine whether proposed projects are even eligible for funding under the program as well as provide the basis for maintaining a current inventory of facilities that can be used for future purposes.

4. The components of a typical priority program includes legislative authorization, a set of rules and regulations governing the program's implementation, an application process, an evaluation procedure, a prioritization of projects, funding, and finally implementation.

5. With regard to Louisiana's port priority program, many of the overall requirements and procedures are similar to other priority programs. However, Louisiana's program specifically emphasizes the need of equitable rationalization of state expenditures in order to avoid duplication of port infrastructure. In addition, because ports are dynamic economic entities, Louisiana's port priority program provides for rigorous analysis of forecasted project benefits in order to ensure the overall impact of the project on the state will be positive, providing maximum benefits for the state. Finally, because effective project implementation is as important to the success of the program as project prioritization, the Louisiana port priority program stipulates strict procedures for the planning and construction of funded projects as well as the operation of maintenance of the completed project.

B. Port Project Evaluation Methodology

1. R.S. 34:3451 et seq., requires that the Department of Transportation and Development (department) develop procedures for review and a methodology to evaluate port projects which are seeking state funds.

2. Procedures to review and evaluate port project applications for funding shall be submitted to the Joint Legislative Committee on Transportation, Highways and Public Works. Before implementing these procedures, the approval of the committee shall be obtained in accordance with the Administrative Procedure Act.

3. The department may contract with the Louisiana State University National Ports and Waterways Institute for any of the duties associated with the development of the port priority program. These activities may include but are not limited to the development, review, and evaluation of plans and specifications and the development of the port program list. However, the final determination of the port priority list shall remain with the department and the Joint Legislative Committee as provided by Act 452.

4. An inventory of ports, navigable waterways, and water transportation facilities shall be maintained. Both private and public facilities shall be included. Information such as location, capacities, and capabilities shall be included. The department shall also serve as a clearinghouse for inquiries for ports and waterways information.

5. Each year, the department shall prepare a summary report of financial requirements for expanding or renovating existing ports and waterways facilities and constructing new ones. The financial requirements shall be separated into state, federal, local and private funds required.

C. Program Procedures

1. Any port authority may submit an application for funding to the department except as provided below. Applications shall be submitted by the first of March, June, September and December of each calendar year for consideration in the following fiscal year. The application shall include a description of the project, demonstration of immediate need, preliminary design, cost estimate, and a description of the project area.

2. Except as provided herein, port authorities cannot submit an application if any of the following are true.

a. On the recommended construction program, the port authority has a balance of Louisiana's funding share equal to or more than the single project maximum legislative funding authority established by the department.

b. The application to be submitted will cause the port authority to have a balance of Louisiana's funding share greater than the single project maximum legislative funding authority established by the department.

c. The port authority has a project that may be canceled under Section VI, Distribution of Funds.

3. If a port authority or its application meets one of the aforementioned factors, it may submit an informal application by December 1 and request that it be reviewed and evaluated in the event that the department has not received sufficient project applications to meet the estimated funding level for the fiscal year. Projects submitted under this provision will receive a lesser priority than other projects on the list. If more than one port authority submits an application under this provision, then the applications that were submitted as informal with the highest evaluation scored will be recommended in their order of score until the estimated funding level has been met. The remaining applications will not be eligible for the Recommended Construction Program.

4. The Louisiana Department of Transportation and Development shall review the applications. Applications shall not be subjected to a formal review and evaluation until

the information required in the application has been submitted. Applications shall also be reviewed by any appropriate state agencies.

5. The act provides for the submittal of a list of recommended projects in prioritized order to the Joint Legislative Committee. The committee will hold public hearings to obtain public input concerning the priority list. After the hearings and before the convening of the regular session, the department shall prepare a recommended construction program for the coming fiscal year and submit it to the joint legislative committee. When the recommended construction program is presented to the legislature for funding, the legislature cannot add any projects to the program.

6. Upon funding by the legislature, the department shall enter into an agreement with the port authority to participate in the construction of the project. The port authority shall provide 10 percent local match for the cost of constructing the project, and shall furnish all lands, easements, rights-of-ways, and spoil disposal areas at no cost to the state unless said items are critical to the project. The port authority also shall operate and maintain the facility without cost to the state.

7. Port authorities domiciled in a parish with a population of 50,000 or more shall be responsible for the preparation of plans and specifications, for letting of bids for construction, and for construction observation. Port authorities domiciled in a parish with a population less than 50,000 may request the department to prepare plans and specifications, to let the project for bids, and to observe construction. The engineer that prepared the plans will inspect the work and certify that the project complies with the plans and specifications upon completion.

8. All contracts for construction shall be advertised and awarded in accordance with R.S. 38:2212 et seq.

9. Projects which are funded by this program shall begin in the fiscal year that the appropriation is made. Execution of an agreement with the department and receipt of preliminary plans by the department shall indicate that the project has begun. These preliminary construction plans differ from the plans submitted in the application in that they are more advanced.

D. Auditing Funds. Funds shall be audited biannually by legislative auditor or certified public accountant in accordance with R.S. 24:513(A) and distributed in accordance with R.S. 24:516(A). The audit shall include an investigation of any failure to comply with the recommendations of the department in planning, design, and construction of the port project. Port authorities shall certify annually that the funds made available have been expended according to law.

E. Misuse of Funds. The legislative auditor shall report any misuse of funds to the Legislative Audit Advisory Council. The council shall determine if in fact funds have been misused. If funds have been misused, the council will instruct the state treasurer to suspend the distribution of funds. The council shall also advise the local district attorney of the misuse. The district attorney will take appropriate actions.

[1]Port and Waterways Institute, Louisiana Statewide Ports Assessment, 2 vols., (Baton Rouge: Louisiana State University, 1986), 11, 88.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 17:274 (March 1991), amended LR 18:749 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), LR 34:1040 (June 2008).

§2105. Program Procedures

A. Application

1. Any Louisiana port authority may submit an application for funding to the department, except as provided below. Applications may be submitted on a quarterly basis to the department no later than the first of March, June, September and December of each calendar year for consideration of funding or funding obligation authority in the following fiscal years. The application shall include a description of the project, demonstration of immediate need, benefits to be derived, preliminary design, cost estimate, and a description of the project area.

2. Except as provided herein, port authorities cannot submit an application if any of the following are true.

a. On the recommended construction program, the port authority has a balance of Louisiana's funding share equal to or more than the single project maximum Legislative Funding Authority established by the department.

b. The application to be submitted will cause the port authority to have a balance of Louisiana's funding share greater than the single project maximum Legislative Funding Authority established by the department.

c. The port authority has a project that may be canceled under Section VI, Distribution of Funds.

3. If a port authority or its application meets one of the aforementioned factors, it may submit an informal application by December 1 and request that it be reviewed and evaluated in the event that the department has not received sufficient project applications to meet the estimated funding level for the fiscal year. Projects submitted under this provision will receive a lesser priority than other projects on the list. If more than one port authority submits an application under this provision, then the applications that were submitted as informal with the highest evaluation scores will be recommended in their order of score until the estimated funding level has been met. The remaining applications will not be eligible for the Recommended Construction Program.

B. Review and Evaluation of Applications. The Louisiana Department of Transportation and Development shall review the applications. Only applications which are complete, as determined by the department, shall be reviewed and evaluated. Applications shall also be reviewed by any appropriate state agencies.

C. List of Recommended Projects and Public Hearings

1. After receipt of applications by the department, the applications shall be reviewed. Only applications which are complete shall be evaluated and prioritized. Each quarter the department shall prepare furnish a prioritized list of projects, based on the applications received for that quarter, to the Joint Legislative Committee. Only projects that have met all program requirements as described herein under "Program Requirements" will be recommended. Multi-year projects that have been partially funded by the program shall receive

higher priority than new projects in the next funding cycle. The Joint Legislative Committee will receive the prioritized list of projects from the department for each of the first three quarters of the year and shall call a public hearing within 30 days of receiving the list in order to receive public testimony regarding any project on the list. At such hearing, the joint committee will vote to accept, reject or modify the list. Each quarter, the department shall reprioritize the list of projects to reflect the cumulative list of projects recommended by the department.

2. After application recommendations for the last quarter are made, the department shall submit the final Port Construction and Development Priority Program to the joint committee for approval. Multi-year projects that have been funded by the program shall receive higher priority than new projects.

3. Prior to the convening of the regular session of the legislature, the Joint Legislative Committee shall hold a public hearing for the purpose of reviewing the final program for the ensuing fiscal year. Prior to such hearing, the department shall publish the appropriate official notice in the necessary journals. Projects recommended but not funded will be included in the list of recommended projects for the following year and will receive priority over newly funded projects.

D. Construction Program

1. After reviewing the public input, the Joint Legislative Committee shall recommend to the legislature a construction program prepared by the department from the list of recommended projects. Projects recommended but not funded will be included in the list of recommended projects for the following year. If a recommended project remains unfunded after four years and has not begun construction under the reimbursement provisions set forth in the Section on "reimbursement" and the port authority still desires to proceed with the project, a new application will be required.

E. Project Agreements

1. Funded Projects Agreements. Prior to the commencement of any work, the port authority shall enter into a project agreement with the department whereby the port authority agrees to the following:

a. to provide at least 10 percent local match for the cost of constructing the project;

b. agrees to obtain all necessary permits for project construction;

c. agrees to furnish all lands, easements, rights of way, and spoil disposal areas necessary to construct and maintain the project without cost to the state, unless said items are critical to the project; and

d. agrees to assume all maintenance and operations costs and future alterations as may be required without cost to the state and agrees to implement the project in accordance with the procedures manual. The port authority shall not use state funds from any source in providing its local match.

2. Reimbursement Project Agreements. If program funds are not sufficient to provide funding for a project recommended by the department and approved by the Joint Legislative Committee and the port authority desires to construct the project with other funding and be reimbursed when the program funds are available, then a reimbursement agreement must be executed with the department prior to the commencement of any work. By executing this agreement, the port authority certifies that:

a. it has sufficient resources to finance 100 percent of the project cost through completion or through completion of an approved phase;

b. it agrees to furnish all lands, easements, rights of way, and spoil disposal areas necessary to construct and maintain the project without cost to the state, unless said items are critical to the project; and

c. it agrees to assume all maintenance and operations costs and future alterations as may be required without cost to the state and agrees to implement the project in accordance with the procedures manual. (See also the Section entitled "Reimbursement".)

F. Project Implementation. Upon executing the project agreement for funding with the department, the port authority shall insure that the Louisiana Port Construction and Development Priority Program Procedures Manual for Funded Projects is adhered to in the preparation of the plans and specifications, advertising for bids, awarding of a contract and construction observation. This manual will be made available to all port authorities designed to receive program funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 16:695 (August 1990), amended LR 18:751 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR:34:1041 (June 2008).

§2107. Program Requirements

A. …

B. Specific Requirements

1. Project and Total Project

a. For purposes of this program, a "project" is that activity that derives benefits to the state after an investment of program and port funds. "Project" refers to that portion of the total project for which the port is seeking program funds from the department. The amount of program funds required is used in calculating the cost benefit ratio which is used for ranking projects.

b. The "total project" is that activity that derives benefits to the state after an investment of program, port and other public and private funds and its cost is used to determine if the requirement for a minimum cost benefit ratio of one is met except as provided herein in references to benefit-cost ratio for projects with a private investment equal to or greater than the program share. The "total project" includes all improvements that are necessary for both the public and private sectors in order to derive the benefits identified in the application.

2. Local Match

a. Each port authority shall provide a local match of at least 10 percent of the cost of constructing the project. Funds obtained from federal or other non-state sources (i.e., private donations) may be used for the local match. State funds cannot be used as local matching funds. Prior to advertisement for bids, verifiable evidence shall be submitted indicating that all non-program funds are in hand or are readily available.

b. A port authority may provide a local match greater than 10 percent. Since the state's investment is the

cost in calculating the benefit-cost ratio, the cost/benefit will be greater if the port elects to provide a larger local match. A higher cost/benefit will result in a higher evaluation score.

3. Land Acquisition

a. Land acquisition shall be eligible for funding only when in the judgment of the department it is an integral component of a project and critical to its development. Land acquisition that is not a critical component of a project or that is intended to be used for future expansion of port facilities is not eligible for funding. An application must be developed which presents costs, benefits and other date for the total project.

4. - 4.b. …

5. Number of Applications. An application shall be prepared for each project. If a port authority submits more than one application in a given quarter, the port authority shall prioritize them for review purposes. The top priority project shall be labeled "Priority One" on the title sheet of the application. The next priority project shall be labeled "Priority Two", etc. Due to time constraints and available personnel to evaluate the applications, the department may restrict the evaluation to only the top two priority projects per port in a given application year.

6. - 7. …

8. Project Commencement. At the application state, projects must be developed sufficiently to allow them to commence within the fiscal year that they are funded. Execution of the project agreement with the department and receipt of preliminary plans by the department shall constitute commencement. Preliminary plans at this stage must be more advanced than plans submitted with the application. Projects that do not commence within the fiscal year that they are funded will result in forfeiture of program funds.

9. Forfeiture of Program Funds

a. If a port authority does not execute the project agreement furnished by the department and return it to the department within 90 days of being mailed to the port authority, then the state funds authorized from the Port Construction and Development Priority Program may be forfeited.

b. If a project is not commenced within the fiscal year that it is funded, then the state funds authorized by the program may be forfeited. A project is considered to have commenced upon delivering the executed project agreement and the preliminary plans to the department. Preliminary plans submitted with the application shall not meet this requirement.

c. If a project is canceled due to not beginning construction within the time frames provided for under the Section on distribution of funds, program funds may be forfeited. Projects which are canceled and program funds forfeited in this manner shall be treated in accordance with the provisions of R.S. 34:3456(A).

d. Advertising a project for bids to construct the project prior to obtaining written notice from the department may result in forfeiture of program funds.

10. …

11. Maintenance. The port authority is responsible for maintenance and will structure its revenue rates to adequately fund maintenance costs. The port authority may execute an agreement with a tenant providing for maintenance of the project to be funded by the tenant. If such an agreement is executed, then the expenses used for the evaluation of the project will be reduced as explained herein in the Section entitled "Minimum Return on the State's Investment."

12. Discount Rate. The discount rate used in the evaluation process shall be based on the interest rate paid on 20-year U.S. Treasury Inflation Protected Securities (TIPS) which is currently 2.375. The rate will be evaluated every two years and may be adjusted by agreement between the department and the Ports Association of Louisiana (PAL). The adjusted rate will be available from the department upon request.

13. Minimum Return on State's Investment. The minimum rate of return for the state's investment shall be the discount rate as stated herein. This evaluation shall be based on no growth. In calculating the rate of return for this criteria, the cost shall be the total program funds invested. The benefits for this calculation shall be the port revenues less expenses associated with the proposed project. Expenses shall include maintenance and expected operational costs. Generally, the minimum allowance for expenses will be no less than the project cost divided by the project life. If the port authority executes a conditional lease with the tenant and the tenant provides all maintenance, then the minimum expense may be one-half of the project cost divided by the project life. Also, see "Private Investment." The evaluation period shall be the life of the project. If the port sells bonds in order to finance all or a portion of the private investment, only revenues in excess of debt service, operating expenses and satisfaction of bond buyer reserve accounts may be used to determine the return on the state's investment. The minimum rate of return is calculated without growth and without additional inflation. The port should establish its fees based upon inflation and market conditions.

14. Benefit-Cost Ratio. Only projects that have a benefit-cost ratio equal to one or more shall be funded by the Port Construction and Development Priority Program. In calculating the B/C for this criteria, the cost is the total investment, both public and private, required to implement the total project and derive the benefits. For projects that have a private investment that is equal to or greater than the amount of program funds required, the project may be exempted from this requirement. If exempted the project must meet a program benefit-cost ratio equal to one or more. The cost for the program benefit-cost ratio is equal to the amount of program funds required for the project.

15. Monitoring

a. For five years after completion of a project funded by the Port Construction and Development Priority Program, the port authority shall submit to the department a report comparing the actual benefits derived with the estimated benefits associated with the project. This report shall be submitted in accordance with the current edition of the Louisiana Port Construction and Development Priority Program Procedures Manual for Funded Projects. The source of data for the actual benefits shall include audited financial statements and other statements from the port authority. Significant deviations will be noted and proposed corrective actions, if needed, will be indicated. The report shall be certified true and correct by the executive director of the port authority.

b. Port authorities that do not comply with this provision will be ineligible to participate in the program until they are determined to be in compliance by the department. The department may audit the reports at program expense.

16. Private Investment. If the private investment exceeds the program investment, then the deduction for expenses may be reduced by the factor derived by dividing the program investment by the private investment. Also, refer to Section 14 "Benefit-Cost Ratio" for possible exemptions to the benefit-cost ratio required for funding.

17. Conditional Projects

a. Projects that meet all of the following conditions may be considered conditional projects:

i. the project must have a total project cost of at least $15 million;

ii. the private investment must meet or exceed the program share;

iii. the participation of the private sector is contingent upon the availability of program funds, and

iv. the application must demonstrate that all parties worked diligently to submit a complete proposal, but due to factors beyond their control, private sector/local share of funding is not assured.

b. A project that meets the above criteria may be evaluated as having immediate need if all other program requirements are met except the availability of the local and/or private share. If it meets all other requirements and is incorporated into the priority list recommended to the legislature, it will be designated as a conditional project. The sponsor will have 18 months from the date of the letter from the department notifying them of the project's funding to submit documentation that arrangements for the private sector and local share have been finalized. If after 18 months the documentation has not been submitted to and approved by the department, project funding will be withdrawn. If the sponsor desires to seek funding for the project, it will have to submit a new application and compete as a new project. The department may limit funding for these projects to a token amount based on availability of funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:751 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1042 (June 2008).

§2109. Application

A. General Instructions

1. Applications may be submitted to the department quarterly no later than the first of March, June, September and December of each calendar year for consideration for funding the following fiscal year. Contact the Office of Public Works, Hurricane Floods Protection and Intermodal Transportation for the current address. The application shall be submitted in the format as shown and as follows:

Number of copies:	Original and three copies
Time:	Before 4 p.m. on the 1st of March, June, September and December

B. - B.3. ...

a. Cargo History. Indicate the total cargo and revenue cargo that was handled by the port in the last five years. List the cargo by type (bulk, break-bulk, neo-bulk, containers) and volumes. Analyze trends of cargo growth and the underlying reasons. Establish the level of utilization of existing facilities in relation to cargo volumes handles. If congestion was experienced, identify facility bottlenecks and describe how they were overcome. Also indicate the sources of all data.

i. If the project is expected to be leased to a tenant, then the cargo history is for the tenant and not the port. If the tenant has no cargo history or will only move a minimal amount of cargo, the port's history may be listed. However, information regarding both the tenant's business history and their business plan should be included to support the project.

ii. Provide a summary in this section of the application. A detailed list of cargo history shall be provided as Attachment H (see §2109.B).

b. Market Analyses. Forecast the cargo which will use the project for the next 10 years. List the type of cargo and volumes expected, along with the market analysis and estimate of the market share. Cargo forecasts and market analyses have to be complete with detailed underlying assumptions and justifications. If cargo forecasts exceed historical trends, provide justification in terms of significant economic and technological developments occurring in the ports service area. If the port facility expansion is in response to increased demand from new industries locating in the area, these location decisions have to be substantiated by comparative cost analyses. As port projects cover diverse types of investments, it is difficult to provide exact industry norms to cover all situations. Some general guidelines on cargo forecasts are provided in this section. These must be considered as general industry norms. Variation from these norms must be analyzed and justified. If the project is expected to be leased to a tenant which does not specialize in cargo movement, then the market analyses is for the tenant's business and not the port's cargo. This also applies to the following: extrapolation from past trends, diverted cargo, generated cargo, origins and destinations, and cargo handling revenue.

b.i. - e. …

f. Letters of Commitment. Include letters of commitment from users, indicate if confidential. Discuss whether commitments have already been made in terms of investments and planning and what other assurances (for example, executed lease agreements) are available to the port that the commitments will be met. If the viability of the project depends on these commitments, sensitivity analyses should be conducted to analyze the alternatives available to the port in the event the commitments are not met by the port users. The inclusion of the following types of information into the letter will be useful:

i. the amount that the user/tenant is willing to pay for use of the project;

ii. anticipated cargo tonnages;

iii. number of jobs created/saved by the project;

iv. amount of investment the user is expecting to make on the project; and

v. length of time to which the user is willing to commit.

3g. - 4.c. …

d. Cost Estimate. The detailed cost estimate for the project shall identify construction costs, land, mitigation, engineering, legal and administration. Recurring maintenance costs shall also be estimated and included in this section. The estimate should also detail the costs of equipment and construction activities to at least the level to allow verification of the estimate. For each component, provide the description, quantity, unit of measure and unit price. Avoid the use of lump sum where possible.

i. In addition to the above, estimates of related investments made by the industrial tenants also have to be included to take into account the cost of the total project. If, for example, an industrial development is anticipated consequent to the project and benefits are claimed, associated costs should also be included as total project costs. The estimate should be of similar detail to that required for the portion of the project to be funded by the program.

4.e. - 5.a. …

b. Revenues and Expenses. Estimate the port revenues for both with and without project conditions. Also estimate the operating expenses with and without the proposed project (e.g., labor, utilities, etc.). These estimates have to be based on present and future port tariff rates to conform to industry norms. Only projects that will realize the minimum return on the state's investment as defined herein will be funded by the program.

c. …

* * *

d. Payroll Benefits. Standard payroll estimates provided in Figure 3 shall be used in estimating payroll benefits in order to equitably evaluate applications for funding through the program. The department will adjust the payroll and spin-off benefits for inflation using the U.S. Department of Labor's Consumer Price Index. If job benefits are assumed to continue unchanged into the future, than an implication is made that those individuals employed as a result of the project would not otherwise find employment. This is not reasonable, as employment will ebb and flow over time. As true net benefits from employment diminish over time, the payroll benefits resulting from the project have to be allowed to decay in a linear fashion annually, reaching zero at the end of the project life.

Figure 3. Average Annual Earnings by Category for Port Related Industries

Work Category	Average Annual Earnings
Managerial (11 - 3071)	$60,400
Supervisory, Stevedore and Skilled Workers (53 - 1031)	46,300
Factory Workers (51 - 2041)	31,500
Clerical, Unskilled and Misc. (53 - 7062)	18,600

Source: Louisiana Department of Labor 1st Quarter of 2005

e. Spin-Off Benefits of Payroll. New payroll generated by the project results in spin-off benefits in the local economy. In order to calculate the spin-off benefits, assume that they are equal to the payroll benefits directly created or maintained by the project. If a project will have $100,000 payroll benefits in a year, then the spin-off benefits also equal $100,000. Spin-off benefits will also decay in a linear fashion annually, reaching zero at the end of its project life.

f. - g. …

h. Benefits-Costs Tabulation. Tabulate the project's benefits and costs over the project's life. Remember that all the benefits will not be derived until all of the components that are identified in "Adequacy of Components" are implemented and are adequate.

6. - 7.d. …

e. If the project is expected to generate over one hundred inbound and outbound trips in an hour or more than 750 trips a day, then a traffic impact study with comments from the Metropolitan Planning Organization and/or the Regional Planning Commission is required. Said study is to identify adverse impacts on the transportation network and to mitigate negative impacts.

f. The assessment is to indicate whether the impacts are short-term or long-term, direct or indirect, and adverse or beneficial. Applicants may seek comments from appropriate state and federal agencies.

8. Master Plan for Port. Discuss how the proposed project complies with the port's master plan or why it does not. Indicate when the master plan was adopted by the port authority. Copies of the master plan are to be submitted with the application as Attachment I. (Refer to Page Application 22, I. Port's Master Plan.)

9. Other Information

a. Funding Sources: Identify all sources and amounts of funding, such as port, program, federal, state, parish, private and other. Clearly indicate if any type of bonds will be sold to assist in financing the project. Indicate if an application for other funds has been submitted and if a commitment has been received. Provide a status of the port authorities' 10 percent local match.

b. Multi-Year Projects. If the project will require more than one year to complete, summarize the anticipated investment schedule required for full completion of the proposed project.

c. Permits. List all necessary permits, indicate the status of permit acquisition, and indicate project compliance with permit requirements.

C. Attachments

1. Resolution. Provide certified copies of the resolution adopted by the port authority similar to the sample resolution in the appendix indicating that the port authority is knowledgeable and is agreeable to its duties and responsibilities in participating in the Port Development and Construction Priority Program.

2. - 3. …

4. Engineering Report. Provide copies of the engineering report and geotechnical report, if applicable.

5. - 8. …

9. Port's Master Plan. The port's master plan is to be submitted with the application. If the port does not have a master plan, then it should submit a layout of existing facilities and an explanation why the port does not have a master plan. If the port has submitted a current copy with an application that was recommended by the department in the

last three years, the port does not have to submit a master plan.

10. - 11. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 16:695 (August 1990), amended LR 18:752 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1044 (June 2008).

§2111. Evaluation

A. Analysis. In determining a score to prioritize the request for funds, the following factors will be considered:

1. technical feasibility;
2. economic feasibility;
3. economic impacts; and
4. port management.

a. - a.v. …

b. Economic Feasibility. The primary factor in determining economic feasibility is the benefit-cost ratio. For purposes of evaluation, the investment is the amount of program funds needed for the proposed port improvement project.

c. Economic Impacts. The economic impacts are to be analyzed by the number of permanent jobs created or saved by the port improvement project after construction.

d. Port Management. The primary factor in appraising the management of the port is the average return on investment for the last five years.

e. Location. The elements in assessing the port's location are as follows:

i. adequacy of the navigable waterways;
ii. suitable railroad access;
iii. ample highway facilities;
iv. location of nearest competing port.

f. Multi-Year Projects. Multi-year projects will receive priority over new projects after the initial year of funding, provided the years are consecutive and the implementation of the previous year components was in accordance with the Program Procedure Manual.

B. Methodology

1. The procedure for evaluating applications for funding is as follows.

a. Completeness. If an application is complete, then proceed, otherwise advise applicant so that he may provide missing data for funding consideration next submittal date.

b. - c. …

d. Return on Investment. Only projects that have met the minimum rate of return for the state's investment as defined herein or more shall be funded by the program.

e. Benefit-Cost Ratio. Only projects that have a benefit-cost ratio equal to one or more shall be funded by the program. In calculating the B/C for this criteria, the cost shall be the total investment, both private and public, needed to implement the total project and derive the benefits. Note that the B/C used in the economic feasibility is based on program funds in lieu of total investment.

i. For projects that have a private investment that is equal to or greater than the amount of program funds required, the project may be exempted from this requirement. If exempted, the project must meet a program benefit-cost ratio equal to one or more. The cost for the program benefit-cost ratio is equal to the amount of program funds required for the project.

f. Technical Feasibility (60 points) To proceed, the technical feasibility score must be 40 or more.

g. Economic Feasibility (150 points) Projects with benefit-cost ratios greater than 10 are scored from 100 to 150 points with the highest of those ratios receiving 150 points. The remaining projects with benefit-cost ratios greater than 10 are pro-rated. Projects with benefit-cost ratios of 10 or less are scored from 0 to 100 points with the highest of those ratios receiving 100 points. The remaining projects with benefit-cost ratios of 10 or less are pro-rated.

h. …

i. Management of Port. (20 points) The port with the highest rate of return on investment for the last five years will receive 20 points. The others are pro-rated.

2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:758 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1046 (June 2008).

§2113. Distribution of Funds

A. Funding. Program funds shall be distributed in accordance with the approved construction program. The funding for any single project that is submitted to the legislature for funding may be limited to a maximum legislative funding authority of $9 million. The department may increase the funding limit for a fiscal year based on the availability of funds. The department may consult with PAL regarding the limit; but, the final limit shall be at the sole discretion of the department.

i. The actual distribution of these funds to the ports for each approved project shall be at the sole discretion of the department. The department may consult with PAL in determining this distribution.

ii. The department may limit the funding distribution to each port authority to no more than one-third 1/3 per year of the single project maximum legislative funding authority established by the department for the fiscal year.

B. Construction. Should the funding level be insufficient to fund all the projects that have been recommended, then the unfunded projects will be included in the recommended list of projects the following year. An unfunded project may be included in the recommended list of projects up to four years without port authority re-submitting an application. If a reimbursement agreement has been executed with the department and the project has begun construction prior to the expiration of the four year period, then the project will remain on said list until all program funds have been authorized.

C. Cancellation. The department may cancel any project that is not under construction with the below mentioned time limits and any unexpected proceeds may be reallocated to another port project. The award of a construction contract shall satisfy the requirement to be "under construction."

1. for projects that are completely funded in one fiscal year, within 18 months of the date of notification from the secretary of the department or his designated representative, that the project has sufficient funding to be completed;

2. for projects that are completely funded over two fiscal years, within 12 months of the date of notification from the secretary of the department, or his designated representative, that the project has sufficient funding to be completed;

3. for projects that are completely funded over three or more fiscal years, within six months of the date of notification from the secretary of the department or his designated representative, that the project has sufficient funding to be completed;

4. for projects that have approval from the department to be divided into more than one construction contract, the above time frames apply to each independent contract that has sufficient funding to be completed. An independent contract shall be a contract that does not require the completion of another contract in order to be constructed. Each additional dependent contract shall be constructed within six months from completion of the contract that it is dependent upon;

5. if a port authority has a project that is eligible for cancellation under the provisions of this Section, the port shall not be eligible to submit an application for funding or to receive additional funding for previously recommended projects until the port authority officially withdraws its project, or until the project, including all approved phases, has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:759 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR:34:1046 (June 2008).

§2115. Reimbursement

A. A sponsoring port authority may make application to utilize its own funds for project construction and to be reimbursed by the Port Construction and Development Priority Program provided that:

1. all program criteria are met in accordance with R.S. 34:3451 et seq.,

2. the project is listed in the recommended construction program, and

3. all program criteria are met in accordance with the program's "procedures manual" and the rules and regulations promulgated by the department.

B. If the sponsoring port authority desires to construct the project or approved phase of the project under the reimbursement option, it must submit a request to the department and execute a project agreement prior to commencement of any work. Projects or approved phases that are advertised for bids under the reimbursement option shall be completed under the reimbursement option whether or not funding or funding obligation authority has been made available by the legislature prior to the completion of the project or approved phase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 34:1047 (June 2008).

William D. Ankner, Ph.D.
Secretary

0806#024

RULE

Department of Transportation and Development
Office of Public Works

Port Construction and Development Priority Program
Procedural Manual (LAC 56:III.Chapter 23)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development hereby repeals Chapter 23 of Subpart 2 of Part III of Title 56 entitled "Louisiana Port Construction and Development Priority Program Procedural Manual," in accordance with the provisions of R.S. 34:3451-3463.

Title 56
PUBLIC WORKS
Part III. Flood Control and Water Management
Subpart 2. Port Construction and Development Priority Program

Chapter 23. Louisiana Port Construction and Development Priority Program Procedural Manual

§2301. Port Construction and Development Priority Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:870 (August 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 34:1047 (June 2008).

§2303. Engineering, Advertising and Contracting Procedures

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:871 (August 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 34:1047 (June 2008).

§2307. Operation and Maintenance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:873 (August 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 34:1047 (June 2008).

§2309. Sample Agreement with Sponsor Responsible for Engineering

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:874 (August 1992), repromulgated by the Department of Transportation and Development, Office of

Public Works, LR 31:942 (April 2005), repealed LR 34:1047 (June 2008).

William D. Ankner, Ph.D.
Secretary

0806#023

RULE

Department of Treasury
State Employees' Retirement System

Instances Where Spousal Consent Is Not Required
(LAC 58:I.2903)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58:I.2903, which establishes a procedure to allow spouses who have separate property regimes to submit documentation to support an exemption from the spousal consent requirements of LASERS laws.

The Rule complies with and is enabled by R.S. 11:515.

Title 58
RETIREMENT
Part I. Louisiana State Employees' Retirement System
Chapter 29. Spousal Consent
§ 2903. Instances Where Spousal Consent Is Not Required

A. - A.3.c. …

4. the spouses have entered into a matrimonial agreement establishing a regime of separation of property pursuant to La. C.C. Art. 2328 between them which remains in effect at the time of retirement, in which case LASERS needs:

a. a certified copy of the agreement; and

b. a notarized affidavit signed by the spouses affirming the existence of a matrimonial agreement as required by this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 26:1490 (July 2000), LR 34:1048 (June 2008).

Cindy Rougeou
Executive Director

0806#034

RULE

Department of Treasury
Teachers' Retirement System

Monthly Contribution Reports and
Submission Requirements (LAC 58:III.101)

In accordance with R.S. 49:950 et seq., the Administrative Procedures Act, the Board of Trustees of Teachers' Retirement System of Louisiana (TRSL) amends the following Rule, LAC 58:III.101, regarding the submission requirements for monthly contribution reports and to implement submission requirements for contributions correction reports. These amendments and additions are all in accordance with authority granted the TRSL Board of Trustees in R.S. 11:873(2). The following provisions shall become effective July 1, 2008.

Title 58
RETIREMENT
Part III. Teachers' Retirement System of Louisiana
Chapter 1. General Provisions
§101. Mandatory Submission of Monthly Salaries and Contributions Reports, Contributions Correction Reports (Form 4B), and Prior Years Certification/Correction of Member Data

A. Monthly Salaries and Contributions Reports. Each month all employers shall certify to the Board of Trustees, by means of file transfer protocol, diskette, or by on-line web based reporting, the amounts of each employee's salary, and the amounts of deductions from the employee's salary to be paid to the annuity savings fund and then credited to the individual accounts of the employee from whose compensation the deductions were made. All file transfer protocol, diskette, and web based reporting formats must be in compliance with criteria established by Teachers' Retirement System of Louisiana as provided in the Employer Procedures Manual. All certified monthly salaries and contributions reports must be submitted by the fifteenth day of the month following the month covered by the report.

1. All employers with 25 or more employees being reported must submit monthly salaries and contributions reports by file transfer protocol or by diskette.

2. All employers reporting fewer than 25 employees must submit monthly salaries and contributions reports by file transfer protocol, diskette, or Teachers' Retirement System of Louisiana's secure on-line web-based inquiry system.

B. Contributions Correction Reports (Form 4B)

1. All employers must submit Contributions Correction Reports (Form 4B) using Teachers' Retirement System of Louisiana's secure on-line web-based inquiry system.

C. Prior Years Certification/Correction of Member Data. Member data previously submitted by employers through the Monthly Salaries and Contributions Reports, and Contributions Correction Reports determined to be questionable or inaccurate must be certified as correct or must be corrected by the employer.

1. All employers must submit Prior Year Certifications/Corrections (with certain exceptions as provided for in C2) using Teachers' Retirement System of Louisiana's secure on-line web-based inquiry system. Data that is to be certified/corrected via the on-line web-based inquiry system are as follows:

a. full-time rate of pay only correction;

b. actual earnings and contribution corrections;

c. service credit;

d. identified "questionable year" data.

2. Employers who have data that meets Teachers' Retirement System of Louisiana's definition of "Unusual", as defined in Teacher's Retirement System of Louisiana's Employer Procedures Manual, must certify/correct the data by submitting a written statement to Teachers' Retirement System of Louisiana signed by an authorized representative of the employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:873(2).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 22:1242 (December 1996), repromulgated, LR 24:499 (March 1998), amended LR 33:1151 (June 2007), effective July 1, 2007, amended LR 34:1048 (June 2008), effective July 1, 2008.

A. Stuart Cagle, Jr.
Deputy Director

0806#009

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Emergency Cut-off Switches (LAC 76:XI.111)

The Wildlife and Fisheries Commission does hereby enact Rules requiring the use of engine cut-off switches on Class A or Class One motorboat with a hand tiller outboard motor equipped with such devices.

Title 76
WILDLIFE AND FISHERIES
Part XI. Boating
Chapter 1. Vessel Equipment; Requirements; Penalties

§111. Emergency Cut-off Switches

A. In accordance with R.S. 34:851.24 and R.S. 34:851.27, the provisions of this Act shall apply on all waters within the jurisdiction of this state.

B. Definitions

Engine Cut-off Switch—an operable emergency cut-off engine stop switch installed on a motorboat and that attaches to the motorboat operator by an engine cut-off switch link.

Engine Cut-off Switch Link—the lanyard and/or cut-off device used to attach the motorboat operator to the engine cut-off switch installed on the motorboat.

Hand Tiller Outboard Motor—an outboard motor that has a tiller or steering arm attached to the outboard motor to facilitate steering and does not have any mechanical assist device which is rigidly attached to the boat and used in steering the vessel, including but not limited to mechanical, hydraulic or electronic control systems. Hand tiller outboard motor shall not mean any type of electronic trolling motor.

C. No person shall operate a Class A or Class One motorboat with a hand tiller outboard motor designed to have or having an engine cut-off switch, while the engine is running and the motorboat is underway, unless:

1. the engine cut-off switch is fully functional and in operable condition; and

2. the engine cut-off switch link is attached to the operator, the operator's clothing, or if worn, the operator's personal flotation device.

D. The provisions of this Section shall not apply to licensed commercial fishermen operating a motorboat while engaged in a commercial fishing activity.

E. Violation of this Section is a class one violation as defined in R.S. 56:31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:851.24 and R.S. 34:851.27.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 34:1049 (June 2008).

Robert J. Barham
Chairman

0806#028

Notices of Intent

NOTICE OF INTENT

Department of Civil Service
Civil Service Commission

Discipline, Corrective Action, and Separations

Pursuant to Article X, Section 10 of the State Constitution, notice is hereby given that the State Civil Service Commission proposes to adopt Rules 1.9.03 and 12.8.1, to repeal Rules 12.4 and 12.10(c), and to amend Rules 12.1, 12.2, 12.3, 12.5, 12.7, 12.8, 12.9, 12.10, and 12.11, governing discipline, corrective action and separations.

Adopt Rule 1.9.03 to read as follows:

1.9.03 *Conduct*—includes any act, omission, physical condition, legal status, element of behavior, or element of performance.

Adopt Rule 12.8.1 to read as follows:

12.8.1 Giving Written Notice.

Written notice is considered given

(a) when it is hand delivered to the employee or

(b) when it is hand delivered to a person of suitable age and discretion who resides with the employee or

(c) on the 7th calendar day after it was mailed with correct postage to the employee's most recent address furnished in writing or electronically to the agency's human resource office.

12.4 and **12.10(c)** Repealed.

Amend and reenact rules 12.1, 12.2, 12.3, 12.5, 12.7, 12.8, 12.9, 12.10, and 12.11 to read as follows:

Chapter 12—Discipline; Corrective Action; Separations

12.1 Authority to Discipline, Remove, and Separate

An appointing authority may discipline, remove, or separate an employee under his or her jurisdiction.

12.2 Separation of Non-Permanent Employees; Cause Required to Discipline or Remove Permanent Employees

(a). An appointing authority may separate a non-permanent employee at anytime.

(b). An appointing authority may discipline or remove a permanent employee for cause.

12.3 Discipline; Restrictions

(a) Discipline includes only: suspension without pay, reduction in pay, involuntary demotion, and dismissal.

(b) A suspension without pay cannot exceed 176 work hours except under Rule 12.5 or as ordered or agreed to under Chapter 13 or Chapter 16.

(c) A reduction in pay cannot reduce an employee's pay below minimum wage or below the pay range minimum.

12.5 Suspension Pending Criminal Proceedings

(a) With prior Commission approval, an appointing authority may suspend a permanent employee, without pay, pending criminal proceedings when an indictment or bill of information has been filed against the employee for conduct that, if proved, would be cause for dismissal and the appointing authority cannot obtain sufficient information to initiate dismissal proceedings.

(b) An appointing authority's request for approval of a suspension under this rule must explain why the conduct would be cause for dismissal, why the employee cannot be allowed to work in any capacity, and why sufficient information to initiate dismissal proceedings cannot be obtained. The request must also include documentation that an indictment or bill of information has been filed.

(c) Before approving a suspension under this rule, the Commission must furnish the employee a copy of the appointing authority's request and a reasonable opportunity to respond.

(d) A permanent employee suspended under this rule must be given written notice before the time the suspension begins. This notice must comply with Rule 12.8 to the extent possible.

12.7 Notice of Proposed Action; Employee's Opportunity to Respond

When an appointing authority proposes to discipline or remove a permanent employee, the employee must be given oral or written notice of the proposed action, the factual basis for and a description of the evidence supporting the proposed action, and a reasonable opportunity to respond.

12.8 Written Notice to Employee of Discipline or Removal.

When an appointing authority decides to discipline or remove a permanent employee, the employee must be given written notice of the action being taken before the time the action becomes effective. The written notice must:

(a) state what action is being taken and the date and time the action will become effective;

(b) describe in detail the conduct for which the action is being taken including, where pertinent, dates, times, places, and names of persons directly involved in or affected by such conduct (unless their identities are protected by law, in which case, identification may be made as permitted by law);

(c) contain the following notice: "You have the right to appeal this action to the State Civil Service Commission within 30 calendar days following the date you receive this notice. The appeal procedure is contained in Chapter 13 of the Civil Service Rules, which is available from the Department of State Civil Service or your Human Resource office."

12.9 Supervisory Letters

(a) Supervisors may issue letters (such as warnings, counseling, coaching, reprimands, supervisory plans, etc.) to attempt to improve an employee's conduct.

(b) An employee may respond in writing to a supervisory letter. The employee's response must be attached to each copy of the letter kept by the agency.

(c) If the same or similar conduct recurs, a supervisory letter can be used to support the severity of future discipline, but only if the letter advised the employee that the letter would be used for this purpose and advised the employee of his right to respond.

(d) A supervisory letter is not discipline, is only appealable under Rule 13.10(b) or (c), and may not be included in any publicly accessible personnel record until used to support future discipline.

12.10 Suspension Pending Investigation

(a) An appointing authority may orally suspend a permanent employee who is suspected of conduct that, if confirmed, would warrant discipline or removal and the employee's continued presence at work during the investigation and subsequent administrative proceedings would be contrary to the best interests of state service. The employee must be told that he is being suspended with pay and the general nature of the conduct being investigated.

(b) A suspension pending investigation must be with pay and cannot exceed 260 work hours. Enforced compensatory or enforced annual leave cannot be used for this 260-hour period.

(c) Repealed.

(d) A suspension pending investigation is not discipline and is only appealable under Rule 13.10(b) or (c).

12.11 Resignations

(a) An employee's oral or written resignation becomes effective on the date and time specified by the employee. An oral resignation must be documented by the person receiving it.

(b) An employee may not withdraw or modify the resignation after the appointing authority accepts it, unless the appointing authority agrees.

(c) When, after receiving notice that dismissal has been proposed, an employee resigns to avoid dismissal, the resignation must be reported as such.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. X, Sec. 10.

HISTORICAL NOTE: Chapter 12 was repealed and reenacted effective August 5, 1992 (LR 18:6). Earlier historical information is available from the Department of State Civil Service. Rule 12.6, amended December 12, 2007 (LR 33:11) is not being changed.

Family Impact Statement

Implementation of this proposed Rule will have no effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Interested persons may submit comments in writing to the Director of the Department of State Civil Service at P.O. Box 94111 Baton Rouge, LA 70804-9111 or by fax to (225) 342-8058. All written comments must be submitted by 4:30 p.m., Tuesday, July 8, 2008. A public hearing will be held on Wednesday, July 9, 2008, at 9:00 a.m. in Room 1-100, Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

Jean Jones
Deputy Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Discipline, Corrective Action, and Separations

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

The only anticipated implementation costs are those associated with publication of the proposal and, if adopted, publication of the rule changes.

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

There is no anticipated 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 because the proposal clarifies current rules and codifies current practice.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Anne S. Soileau
Director
0806#038

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Inclusion of Alternate Assessment Results (LAC 28:LXXXIII.3905)

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 28, 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 that are required to change in response to state and federal laws and regulations. Proposed changes in Bulletin 111 §3905 will provide for an increase in index points assigned to students who score Approaching Basic and Basic on the LAA 2 test. The index points previously assigned to those achievement levels were 50 and 100 respectively and now it is proposed that the index points would change to 100 and 150 respectively.

Title 28
EDUCATION
Part LXXXIII. Bulletin 111—The Louisiana School, District and State Accountability System
Chapter 39. Inclusion of Students with Disabilities
§3905 Inclusion of Alternate Assessment Results

A. - B.1. ...

C. LAA 2 shall first be administered in Spring 2006 to students in grades 4, 8, 10, and 11. In Spring 2007, LAA 2 shall be given in grades 4-11.

1. Each LAA 2 exam will be assigned 1 of 4 performance levels (Basic, Approaching Basic, Foundational, and Pre-Foundational) and each performance level will be assigned points for use in assessment index calculations as follows.

LAA 2 Performance Level	Assessment Points
Basic	150
Approaching Basic	100
Foundational	50
Pre-Foundational	0

2. Students scoring Approaching Basic on a LAA 2 exam will be considered proficient in subgroup component calculations.

D. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 30:767 (April 2004), LR 31:2763 (November 2005), LR 33:254 (February 2007), LR 34:

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, 2008, 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 111—The Louisiana School, District, and State Accountability System—Inclusion of Alternate Assessment Results

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

Proposed changes in Bulletin 111 §3905 will provide for an increase in index points assigned to students who score Approaching Basic and Basic on the LAA 2 test. The index points previously assigned to those achievement levels were 50 and 100 respectively and now it is proposed that the index points would change to 100 and 150 respectively.

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
0806#044

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students and Advanced Placement and Military Service Credit (LAC 28:CXV.2321 and 2325)

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*: §2321. Carnegie Credit for Middle School Students and §2325. Advanced Placement and Military Service Credit. The revisions will accomplish the following:

- Revises the Carnegie Credit for Middle School Students policy to allow students who are repeating the eighth grade because they have scored Unsatisfactory on the Mathematics and/or English Language Arts components of LEAP to earn Carnegie credit in elective courses.
- Adds a list of Advanced Placement courses which can be taught in high schools to the Advanced Placement policy in Bulletin 741.

Section 2321 was revised to give repeating eighth graders more options and to prevent them from falling too far behind

their peers. The revision to §2325 was requested by educators. The revisions provide schools and districts the names of specific advanced placement courses that can be taught in Louisiana.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction

§2321. Carnegie Credit for Middle School Students

A. Students in grades five through eight are eligible to receive Carnegie credit for courses in the high school Program of Studies in mathematics, science, social studies, English, foreign language, keyboarding/keyboarding applications, or computer/technology literacy.

B. - E. …

F. Students who are repeating the eighth grade because they have scored *Unsatisfactory* on the Mathematics and/or English Language Arts components of LEAP shall not take or receive Carnegie credit for any high school courses in a content area in which they scored *Unsatisfactory* on the eighth grade LEAP.

1. In addition to the courses in §2321(A), these students may receive Carnegie credit in other elective courses.

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 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:2601 (December 2007), LR 34:609 (April 2008), LR 34:

§2325. Advanced Placement and Military Service Credit

A. High school credit shall be granted to a student successfully completing an advanced placement course or a course designated as advanced placement, regardless of his test score on the examination provided by the College Board.

1. Procedures established by the College Board must be followed.

2. Courses listed in the Program of Studies may be designated as advanced placement courses on the student's transcript by following procedures established by the DOE.

a. The chart below lists the College Board AP course titles and the corresponding Louisiana course titles to be used for these AP courses.

College Board AP Course Title(s)	Louisiana Course Title
Art History	AP Art History
Biology	Biology II
Calculus AB	Calculus
Calculus BC	AP Calculus BC
Chemistry	Chemistry II
Computer Science A	AP Computer Science A
Computer Science AB	AP Computer Science AB
Economics: Macro	Economics
Economics: Micro	AP Economics: Micro
English Language and Composition	English III
English Literature and Composition	English IV
Environmental Science	Environmental Science
European History	European History
French Language	French IV
French Literature	French V
German Language	German IV
Government and Politics: Comparative	AP Government and Politics: Comparative
Government and Politics: United States	AP Government and Politics: United States
Human Geography	World Geography
Latin Literature	Latin V
Latin: Vergil	Latin IV
Music Theory	Music Theory II
Physics B	Physics
Physics C: Electricity and Magnetism	AP Physics C: Electricity and Magnetism
Physics C: Mechanics	AP Physics C: Mechanics
Psychology	Psychology
Spanish Language	Spanish IV
Spanish Literature	Spanish V
Statistics	Probability and Statistics
Studio Art: 2-D Design	Art IV
Studio Art: 3-D Design	AP Studio Art 3-D Design
Studio Art: Drawing	Art III
U.S. History	American History
World History	World History

B. Two units of elective credit toward high school graduation shall be awarded to any member of the United States Armed Forces, their reserve components, the National Guard, or any honorably discharged veteran who has completed his/her basic training, upon presentation of a military record attesting to such completion.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:

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, 2008, 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—Carnegie Credit for Middle School Students and Advanced Placement and Military Service Credit

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

The implementation of changes requires no cost or savings to state or local governmental units. The revision to Sections 2325 and 2321 in *Bulletin 741: Louisiana Handbook for School Administrators* will accomplish the following:

- Adds a list of Advanced Placement courses which can be taught in high schools to the Advanced Placement policy in Bulletin 741.
- Revises the Carnegie Credit for Middle School Students policy to allow students who are repeating the eighth grade because they have scored Unsatisfactory on the Mathematics and/or English Language Arts components of LEAP to earn Carnegie credit in elective courses.

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	H. Gordon Monk
Deputy Superintendent	Staff Director
Management and Finance	Legislative Fiscal Office
0806#046	

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—PreGED/Skills Option Program (LAC 28:CXV.2907)

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*: §2907. PreGED/Skills Option Program. The proposed Rule will add new policy to existing policy for the PreGED/Skills Options program. The changes will establish two pathways of study for the PreGED/Skills Option Program: 1) A PreGED pathway for students reading below the seventh grade level, who will be working toward a locally developed skills certificate or industry-based skills certificate; and 2) a GED pathway for students reading at or above the seventh grade level and working toward attainment of an Industry-based certification. The pathways will include a scripted curriculum, a job shadowing/mentoring component, and the inclusion of WorkKeys assessment for the GED pathway students. These requested actions are the result of the review and analysis of the PreGED/Skills Option Program and a report of the PreGED/Skills Options Task Force charged to bring forth recommendations to improve the program.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 29. Alternative Schools and Programs
§2907. PreGED/Skills Option Program

A. A school system shall implement the PreGED/Skills Option Program and shall obtain approval from the DOE at least 60 days prior to the establishment of the program.

NOTE: Refer to High Stakes Testing Policy in Bulletin 1566—Guidelines for Pupil Progression Plans.

B. A program application describing the PreGED/Skills Option Program shall be submitted and shall address the following program requirements.

1. Students who shall be 16 years of age or older or who shall turn 16 years of age during the year they are to enroll into the program and meet one or more of the following criteria:

a. shall have failed LEAP 21 English language arts and/or math eighth grade test for one or two years;

b. shall have failed English language arts, math, science and/or social studies portion of the GEE 21;

c. shall have participated in alternate assessment;

d. shall have earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, or not more than 15 Carnegie units by age 19;

e. students with Limited English Proficiency shall be considered eligible for the PreGED/Skills Option Program.

2. Enrollment is voluntary and requires parent/guardian consent.

3. Counseling is a required component of the program.

4. The program shall have both a PreGED/academic component and a skills/job training component. Traditional Carnegie credit course work may be offered but is not required. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses in developing the skills component.

5. There shall be two pathways of study for the PreGED/Skills Options Program to be optional for the 08-09 school year and required for the 09-10 school session and beyond:

a. PreGED Pathway for students meeting the following criteria:

i. reading below the seventh grade level; and

ii. working toward a locally developed skills certificate or Industry-based skills certificate;

b. GED Pathway for students meeting the following criteria:

i. reading at or above the seventh grade level; and

ii. working toward attainment of an industry-based certification.

6. The pathways shall include a scripted curriculum, a job shadowing/job mentoring component, and the inclusion of the WorkKeys assessment for the GED Pathway students.

7. The PreGED/Skills Options Program shall be operated on a separate site from the regular high school program. Exceptions will be considered based on space availability, transportation or a unique issue.

8. Students who complete only the skills section will be given a Certificate of Skills Completion.

9. Students will count in the October 1 MFP count.

10. Students will be included in School Accountability.

C. While enrolled, they shall be required to take the ninth grade Iowa Test or alternate assessment. All programs will be considered Option 1 in accountability for alternative education purposes, and the score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's School Performance Score (SPS).

NOTE: Refer to the Guidelines and Application Packet provided by the DOE for the requirements to establish a PreGED/Skills Option Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 34:

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? Yes.

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? Yes.

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, 2008, 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—PreGED/Skills Option Program

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

The proposed rule will establish two pathways of study for the PreGED/Skills Option Program. The pathways will include a scripted curriculum, a job shadowing/mentoring component, and the inclusion of WorkKeys assessment for the GED pathway students. There will be a cost of approximately $1,000 for the Department of Education to prepae a letter announcing the changes and postage for dissemination to the districts ($100), as well as projected costs for regional workshops for technical assistance in the implementation of the policy ($900). The local school districts may incur additional costs determined by their reallocation of resources for the two pathways. The school district will use a combination of Minimum Foundation Program funds, and local resources to cover any additional costs resulting from the implementation of the proposed policy.

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

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

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.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no direct effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
Management and Finance
0806#059

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Educational Technology Areas
(LAC 28:CXXXI.665)

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:* §665. Educational Technology Areas. This revision will allow the issuance of online instructor as an add-on endorsement to a valid Louisiana teaching certificate. Access to online learning opportunities for K-12 students and teachers has grown rapidly across the nation in the past few years. Research has shown that these types of learning opportunities can play a significant role in adequately preparing students and teachers for the skills necessary for success in the twenty-first century. This certification area will focus on ways to further support high school redesign efforts, as well as to build the state's capacity for a pool of qualified and skilled teachers for online learning courses.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 6. Endorsements to Existing Certificates
Subchapter C. All Other Teaching Endorsement Areas
§665. Educational Technology Areas

A. - B.3.b. ...

C. Online Instruction

1. Eligibility requirements:

a. valid type B or level 2 Louisiana teaching certificate (requires three years of teaching experience) or equivalent out-of-state teaching certificate;

b. complete an online course or combination of online courses focused on the following topics:

i. best practices in online course delivery;

ii. facilitation skills that foster reflective discussions in an online learning environment;

iii. effective strategies for assessing learning in the online environment;

iv. techniques for using online tools to address student learning needs;

v. asynchronous discussion and online course-authoring tools;

vi. ethical and legal issues related to the use of online resources;

c. complete an online teaching intern experience (at least one semester in length) or successfully serve as an instructor/facilitator of an online course (at least six weeks in length).

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 32:1820 (October 2006), amended LR 34:

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, 2008, 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—Educational Technology Areas

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

This revision will allow the issuance of Online Instructor as an add-on endorsement to a valid Louisiana teaching certificate. The option will be included in the Add-On Endorsement Policy of Bulletin 746. 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
Deputy Superintendent
Management and Finance

H. Gordon Monk
Staff Director
Legislative Fiscal Office

0806#048

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program (LAC 28:CXXXI.219, 221, and 223)

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:* §219. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach for Grades 1-5: Adopted October 2004; Effective July 1, 2010; §221. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach for Grades 4-8: Adopted October 2004; Effective July 1, 2010; and §223. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach for Grades 6-12: Adopted October 2004; Effective July 1, 2010. The revision of this policy will move regular and mild/moderate programs from blended to integrated/merged programs resulting in better prepared special education and regular education teachers in grade level 1-12. The move from blended to integrated/merged programs will result in better prepared special education and regular education teachers to meet the needs of all students and to support the department's mission to improve student achievement for all students, eliminate the achievement gap, and prepare more effective citizens for a global market.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 2. Louisiana Teacher Preparation Programs
Subchapter A. Traditional Teacher Preparation Programs

§219. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach[1] for Grades 1-5[2]: Adopted October 2004; Effective July 1, 2010.

A. Students who complete an approved blended general/special education mild/moderate program for

elementary grade levels 1-5 are eligible for certification in the areas of mild/moderate and elementary grades 1-5. The program focus is on the areas of Reading/Language Arts and Mathematics.

1. General Education—54 semester hours. Requirements provide the prospective elementary grades 1-5 teacher with basic essential knowledge and skills.

English	12 semester hours
Mathematics	12 semester hours
Sciences	15 semester hours
Social studies	12 semester hours
Arts	3 semester hours

2. Focus Area, Special Education - 21 semester hours.

Special Education Focus Area	
Special Education Content[3]	21semester hours

3. Knowledge of the Learner and the Learning Environment, with Emphasis on the Elementary School Student—15 semester hours.

a. Requirements provide the prospective elementary grades 1-5 teacher with a fundamental understanding of the learner and the teaching and learning process. Coursework should address the needs of the regular and the exceptional child:

i. child/adolescent development or psychology;
ii. educational psychology;
iii. the learner with special needs;
iv. classroom organization and management;
v. multicultural education.

4. Methodology and Teaching—33 semester hours

a. Requirements provide the prospective elementary grades 1-5 teacher with fundamental pedagogical skills.

Reading and Literacy Content/Methodology	12 semester hours
Teaching Methodology and Strategies (science and social studies must be addressed)	6 semester hours
Math Content/Methodology	6 semester hours
Student teaching[4]	9 semester hours
Flexible hours for the university's use	3 semester hours
Total required hours in the program[5]	126 semester hours

[1]NOTE: Linda P. Blanton, Marleen Pugach, "Collaborative Programs in General and Special Teacher Education: An Action Guide for Higher Education and State Policymakers," pp. 11-24

[2]NOTE: Students who do not possess basic technology skills should provide coursework or opportunities to develop those skill early in their program.

[3]NOTE: Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

[4]NOTE: (50 percent of the student teaching must include working with and actual teaching of students with disabilities)

[5]NOTE: In addition to the student teaching experience, students should be provided actual teaching experiences (in addition to observations) in classroom settings during the sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

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 32:1787 (October 2006), amended LR 33:433 (March 2007), LR 34:

§221. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach[1] for Grades 4-8[2]: Adopted October 2004; Effective July 1, 2010.

A. Students who complete an approved blended general/special education mild/moderate program for middle grades 4-8 are eligible for certification in the areas of mild/moderate and the selected middle grades 4-8 content area. The program focus is on special education and one middle school content area.

1. General Education—54 semester hours. Requirements provide the prospective middle grades 4-8 teacher with basic essential knowledge and skills.

English	12 semester hours
Mathematics	12 semester hours
Sciences	15 semester hours
Social studies	12 semester hours
Arts	3 semester hours

2. Focus Area, Special Education and One Middle School Content Focus Area—42 semester hours (combined general education and focus area content semester hours should equal 19).

Middle School Content Area (English, mathematics, science, or social studies) NOTE: General Education coursework may be used to create the 21 semester hours.	21 semester hours
Special Education Content[3]	21 semester hours

3. Knowledge of the Learner and the Learning Environment, with the Emphasis on the Middle School Student—15 semester hours.

a. Requirements provide the prospective middle grades 4-8 teacher with a fundamental understanding of the learner and the teaching/learning process. Coursework should address the needs of the regular and the exceptional child:

i. child/adolescent development or psychology;
ii. educational psychology;
iii. the learner with special needs;
iv. classroom organization and management;
v. multicultural education.

4. Methodology and Teaching—21 semester hours. These requirements provide the prospective middle grades 4-8 teacher with fundamental pedagogical skills.

Reading and Literacy Content/Methodology	6 semester hours
Teaching Methodology and Strategies	6 semester hours
Student teaching[4]	9 semester hours
Flexible hours for the university's use	3-6 semester hours
Total required hours in the program	123 semester hours

[1]NOTE: Linda P. Blanton, Marleen Pugach, "Collaborative Programs in General and Special Teacher Education: An

Action Guide for Higher Education and State Policymakers," pp. 11-24

[2]NOTE: Students who do not possess basic technology skills should provide coursework or opportunities to develop those skill early in their program.

[3]NOTE: Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

[4]NOTE: (50 percent of the student teaching must include working with and actual teaching of students with disabilities)

[5]NOTE: In addition to the student teaching experience, students should be provided actual teaching experiences (in addition to observations) in classroom settings during the sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

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 32:1788 (October 2006), amended LR 33:433 (March 2007), LR 34:

§223. Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program: An Integrated to Merged Approach[1] for Grades 6-12[2]: Adopted October 2004; Effective July 1, 2010.

A. Students who complete an approved blended general/special education mild/moderate program for secondary grade levels 6-12 are eligible for certification in the areas of mild/moderate and in the selected secondary grades 6-12 content area. The program focus is on special education and one high school content area.

1. General Education—30 semester hours. These requirements provide the prospective secondary grades 6-12 teacher with basic essential knowledge and skills.

English	6 semester hours
Mathematics	6 semester hours
Sciences	9 semester hours
Social studies	6 semester hours
Arts	3 semester hours

2. Focus Area, Special Education and One High School Content Focus Area—51 semester hours (combined general education and focus area content semester hours should equal 31).

Secondary School Content Area NOTE: General Education coursework may be used to create the 30 semester hours.	30 semester hours
Special Education Focus Area	21 semester hours

3. Knowledge of the Learner and the Learning Environment—15 semester hour.

a. These requirements provide the prospective secondary grades 6-12 teacher with a fundamental understanding of the learner and the teaching/learning process. Coursework should address the needs of the regular and the exceptional child:

i. child/adolescent development or psychology;

ii. educational psychology;

iii. the learner with special needs;

iv. classroom organization and management;

v. multicultural education.

4. Methodology and Teaching—21 semester hours. These requirements provide the prospective secondary grades 6-12 teacher with fundamental pedagogical skills.

Reading and Literacy Content/Methodology	6 semester hours
Teaching Methodology and Strategies	6 semester hours
Student teaching[4]	9 semester hours
Flexible hours for the university's use	6-9 semester hours
Total required hours in the program	123 semester hours

[1]NOTE: Linda P. Blanton, Marleen Pugach, "Collaborative Programs in General and Special Teacher Education: An Action Guide for Higher Education and State Policymakers," pp. 11-24

[2]NOTE: Students who do not possess basic technology skills should provide coursework or opportunities to develop those skill early in their program.

[3]NOTE: Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

[4]NOTE: (50 percent of the student teaching must include working with and actual teaching of students with disabilities)

[5]NOTE: In addition to the student teaching experience, students should be provided actual teaching experiences (in addition to observations) in classroom settings during the sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

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 32:1788 (October 2006), amended LR 33:433 (March 2007), LR 34:

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, 2008, 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—Minimum Requirements for Approved General/Special Education Mild-Moderate Undergraduate Program

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

The revision of this policy will move regular and mild/moderate programs from blended to integrated/merged programs resulting in better prepared special education and regular education teachers in grade level 1-12. 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
Deputy Superintendent
Management and Finance
0806#047

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act
(LAC 28:XLIII.Chapters 1-10)

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 1706—Regulations for Implementation of the Children with Exceptionalities Act* (R.S. 17:1941 et seq.): Subpart A. Regulations for Students with Disabilities. The proposed Rule formally realigns the state special education regulations to conform to the reauthorization of IDEA (Individuals with Disabilities Education Act) and provides Louisiana educators and education administrators with current policies and procedures related to the provision of special education services for students with disabilities. Technical changes were made to comply with the 2004 reauthorization of the IDEA (Individuals with Disabilities Education Act).

Title 28
EDUCATION
Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act
Subpart A. Regulations for Students with Disabilities
Chapter 1. State Eligibility
Subchapter A. FAPE Requirements

§101. Free Appropriate Public Education (FAPE)

A. General. A free appropriate public education shall be available to all students residing in the state between the ages of 3 and 21, inclusive, including students with disabilities who have been suspended or expelled from school as provided for in §530.D.

1. The Louisiana State Board of Elementary and Secondary Education (the state board) shall be responsible for the assurance of a free appropriate public education to all students residing in the state; and shall be directly responsible for the provision of a free appropriate public education to students who are within the jurisdiction of the Special School District, the Recovery School District, or in a BESE Special School (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center).

B. FAPE for Children Beginning at Age Three

1. The state board shall ensure that:

a. the obligation to make FAPE available to each eligible student residing in the state begins no later than the child's third birthday; and

b. an IEP is in effect for the student by that date, in accordance with §323.B.

2. if a student's third birthday occurs during the summer, the student's IEP Team shall determine the date when services under the IEP will begin.

C. Students Advancing from Grade to Grade

1. The state shall ensure that FAPE is available to any individual student with a disability who needs special education and related services, even though the student has not failed or been retained in a course or grade, and is advancing from grade to grade.

2. The determination that a student described in Subsection A of this Section is eligible under these regulations shall be made on an individual basis by the group responsible within the student's LEA for making eligibility determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§102. Limitation-Exception to FAPE for Certain Ages

A. General. The obligation to make FAPE available to all students with disabilities does not apply with respect to the following.

1. Students aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility:

a. were not actually identified as being a student with a disability as defined in §905; and

b. did not have an IEP under part B of the IDEA.

i. The exception in Subparagraph A.1.a of this Section does not apply to students with disabilities, aged 18-21, who:

(a). had been identified as a student with a disability as defined in §905 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(b). did not have an IEP in their last educational setting, but who had actually been identified as a student with a disability as defined in §905.

2.a. students with disabilities who have graduated from high school with a regular high school diploma.

b. The exception in Paragraph A.2 of this Section does not apply to students who have graduated from high school but have not been awarded a regular high school diploma.

c. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §504.

d. As used in Subparagraphs A.2.a through A.2.c of this Section, the term *regular high school diploma* does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED).

B. Documents Relating To Exceptions. The LDE shall assure that the information it has provided to the secretary regarding the exceptions in Subsection A of this Section, as required by §701 (for purposes of making grants to states under these regulations), is current and accurate.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter B. Other FAPE Requirements

§103. FAPE—Methods and Payments

A. The state of Louisiana may use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of these regulations. If it is necessary to place a student with a disability in a residential facility, for example, the state could use joint agreements between the agencies involved for sharing the cost of that placement.

B. Nothing in these regulations relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a student with a disability.

C. Consistent with §323.C, the LDE ensures that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§104. Residential Placement

A. If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the program, including non-medical care and room and board, shall be at no cost to the parents of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§105. Assistive Technology

A. Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §905, are made available to a student with a disability if required as a part of the student's:

1. special education under §905;
2. related services under §905; or
3. supplementary aids under §§905 and 114.A.2.b.

B. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§106. Extended School Year Services

A. General

1. Each public agency shall ensure that extended school year (ESY) services are available as necessary to provide FAPE, consistent with Paragraph A.2 of this Section.

2. Extended school year services shall be provided only if a student's IEP Team determines, on an individual basis, in accordance with §§320 through 324, that the services are necessary for the provision of FAPE to the student.

3. In implementing the requirements of this Section, a public agency may not:

a. limit ESY services to particular categories of disability; or

b. unilaterally limit the type, amount, or duration of those services; and

4. the IEP Team shall make its determination in accordance with the LDE's extended school year services eligibility criteria found in *Bulletin 1530—Louisiana's IEP Handbook.*

B. Definition. As used in this Section, the term *extended school year (ESY) service*—special education and related services that:

1. are provided to a student with a disability:

a. beyond the normal school year of the public agency;

b. in accordance with the student's IEP;

c. at no cost to the parents of the student; and

2. meet the standards of the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§107. Nonacademic Services

A. The LDE shall ensure the following:

1. each public agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.

B. Nonacademic and extracurricular services and activities may include counseling services, athletics,

transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§108. Physical Education

A. The LDE shall ensure that public agencies in the state make available.

1. General. Physical education services, specially designed if necessary, to every student with a disability receiving FAPE, unless the public agency enrolls students without disabilities and does not provide physical education to students without disabilities in the same grades.

B. Regular Physical Education. Each student with a disability shall be afforded the opportunity to participate in the regular physical education program available to non-disabled students unless:

1. the student is enrolled full time in a separate facility; or

2. the student needs specially designed physical education, as prescribed in the student's IEP.

C. Special Physical Education. If specially designed physical education is prescribed in the student's IEP, the public agency responsible for the education of that student shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

D. Education in Separate Facilities. The public agency responsible for the education of a student with a disability who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services in compliance with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§109. Full Educational Opportunity Goal (FEOG)

A. The LDE shall have in effect policies and procedures to demonstrate that the LDE has established a goal of providing a full educational opportunity to all students with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§110. Program Options

A. The LDE shall ensure that each public agency takes steps to ensure that the students with disabilities residing in the area served by the public agency have available to them the variety of educational programs and services available to non-disabled students, including but not limited to art, music, industrial arts, consumer and homemaking education, and vocational education.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§111. Child Find

A. General

1. The LDE shall ensure that:

a. all students with disabilities residing in the state, including students with disabilities who are homeless children or who are wards of the state, and students with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

b. a practical method is developed and implemented to determine which students are currently receiving needed special education and related services.

2. Each public agency, in accordance with the requirements of these regulations, shall document that on-going identification activities are conducted to identify, locate, and evaluate each student who is suspected of having a disability, in need of special education and related services, and meets the criteria listed below:

a. is enrolled in an educational program operated by or under the jurisdiction of a public agency;

b. is enrolled in a private school program within the geographical jurisdiction of a public agency;

c. is enrolled in a public or private preschool or day care program; or

d. is not enrolled in a school, except for students who have graduated with a regular high school diploma.

B. Use of Term Developmental Delay. The following provisions apply with respect to implementing the Child Find requirements of this Section:

1. the LDE has defined the term developmental delay in the definition of student with a disability in §905 of this Part and determined that it applies to students aged three through eight.

2. an LEA is not required to adopt and use the term d*evelopmental delay* for any students within its jurisdiction.

3. if an LEA uses the term developmental delay for students described in Paragraph B of the definition of *student with a disability* as defined in §905, the LEA shall conform to both the definition and to the age range therein.

C. Other Students in Child Find. Child Find also shall include:

1. students who are suspected of being students with a disability under §905 and in need of special education, even though they are advancing from grade to grade; and

2. highly mobile students, including migrant students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§112. Individualized Education Programs (IEP)

A. The LDE shall ensure that an IEP, that meets the requirements of section 636(d) of the IDEA, is developed, reviewed, and revised for each student with a disability in accordance with §§320 through 324, except as provided in §301B.3.b.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§113. Routine Checking of Hearing Aids and External Components of Surgically Implanted Medical Devices

A. Hearing Aids. Each public agency shall ensure that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.

B. External components of surgically implanted medical devices.

1. Subject to Paragraph B.2 of this Section, each public agency shall ensure that the external components of surgically implanted medical devices are functioning properly.

2. For a student with a surgically implanted medical device who is receiving special education and related services under these regulations, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter C. Least Restrictive Environment (LRE)

§114. LRE Requirements

A. General

1. Except as provided in §324D2 (regarding students with disabilities in adult prisons), the LDE adopts the policies and procedures in this Section and in §§115 through 120 to ensure that public agencies in the state meet the federal LRE requirements of this Section and §§115 through 120.

2. Each public agency shall ensure that:

a. to the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are nondisabled; and

b. special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

B. Additional Requirement—State Funding Mechanism

1. General

a. The state funding mechanism shall not result in placements that violate the requirements of Subsection A of this Section; and

b. the state shall not use a funding mechanism by which it distributes funds on the basis of the type of setting in which a student is served that will result in the failure to provide a student with a disability FAPE according to the unique needs of the student, as described in the student's IEP.

2. Assurance. The state has policies and procedures to ensure compliance with Paragraph B.1 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§115. Continuum of Alternative Placements

A. Each public agency shall ensure that a continuum of alternative educational placements is available to meet the need of students with disabilities for special education and related services.

B The continuum required in Subsection A of this Section shall:

1. include the alternative placements listed in the definition of special education under §905 (instruction in regular classes, special classes, special schools, home instruction, instruction in hospitals, and institution); and

2. make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§116. Placements

A. In determining the educational placement of a student with a disability, including a preschool student with a disability, each public agency shall ensure that:

1. the placement decision:

a. is made by a group of persons including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

b. is made in conformity with the LRE provisions of this Section, including §§114 through 118;

2. the student's placement:

a. is determined at least annually;

b. is based on the student's IEP; and

c. is as close as possible to the student's home;

3. unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if non-disabled;

4. in selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs; and

5. a student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum;

6. for students with a hearing or visual impairment, parents shall be informed of all placement options, including the Louisiana School for the Deaf and the Louisiana School for the Visually Impaired, that will appropriately meet the students' unique educational needs;

7. each completed IEP shall document the placement requirements described in *Bulletin 1530—Louisiana's IEP Handbook.*

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§117. Nonacademic Settings

A. In providing or arranging for the provision of nonacademic and extracurricular services and activities including meals and recess periods and the services and activities set forth in §107, each public agency shall ensure that each student with a disability participates with non-disabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and

necessary for the student to participate in nonacademic settings.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§118. Students in Public or Private Institutions

A. Except as provided in §149D (regarding agency responsibility for general supervision for some individuals in adult prisons), the LDE shall ensure that §114 is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§119. Technical Assistance and Training Activities

A. The LDE shall carry out activities to ensure that teachers and administrators in all public agencies:

1. are fully informed about their responsibilities for implementing §114; and

2. are provided with technical assistance and training necessary to assist them in this effort.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34;

§120. Monitoring Activities

A. The LDE shall carry out activities to ensure that §114 is implemented by each public agency.

B. If there is evidence that a public agency makes placements that are inconsistent with §114, the LDE shall:

1. review the public agency's justification for its actions; and

2. assist in planning and implementing any necessary corrective action.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter D. Additional Eligibility Requirements

§121. Procedural Safeguards

A. General. The LDE shall have procedural safeguards in effect to ensure that each public agency in the state meets the requirements of §§500 through 536.

B. Procedural Safeguards Identified. Students with disabilities and their parents shall be afforded the procedural safeguards identified in Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34

§122. Evaluation

A. Students with disabilities shall be evaluated in accordance with §§301 through 308 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§123. Confidentiality of Personally Identifiable Information

A. The LDE shall have policies and procedures in effect to ensure that public agencies in the state comply with §§611 through 626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§124. Transition of Children from the Part C Program to Preschool Programs

A. The state shall have in effect policies and procedures to ensure that:

1. children participating in early intervention programs assisted under part C of the IDEA, and who will participate in preschool programs assisted under part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9) of the IDEA;

2. by the third birthday of a child described in Paragraph 1 of this Section, an IEP has been developed and is being implemented for the child consistent with §101.B; and

3. each affected LEA will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10) of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§125-128. Reserved.

Subchapter E. Students in Private Schools

§129. State Responsibility regarding Students in Private Schools

A. The state shall have in effect policies and procedures that ensure that LEAs, and, if applicable, the LDE, meet the private school requirements in §§130 through 148.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter F. Students with Disabilities Enrolled by their Parents in Private Schools

§130. Definition of Parentally-Placed Private School Students with Disabilities

A. *Parentally-Placed Private School Students with Disabilities*—students with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary or secondary school as defined in §905, other than students with disabilities covered under §§145 through 147.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§131. Child Find for Parentally-Placed Private School Students with Disabilities

A. Each LEA shall locate, identify, and evaluate all students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools, located in the school district served by the LEA, in accordance with Subsections B through E of this Section and §§112 and 202.

B. Child Find Design. The Child Find process shall be designed to ensure:

1. the equitable participation of parentally-placed private school students; and

2. an accurate count of those students.

C. Activities. In carrying out the requirements of this Section, the LEA shall undertake activities similar to the activities undertaken for the agency's public school students.

D. Cost. The cost of carrying out the Child Find requirements in this Section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §133.

E. Completion Period. The Child Find process shall be completed in a time period comparable to that for students attending public schools in the LEA consistent with §302.

F. Out-of-State Students. Each LEA in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school students who reside in a state other than the state in which the private schools that they attend are located.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§132. Provision of Services for Parentally-Placed Private School Students with Disabilities-Basic Requirements

A. General. To the extent consistent with the number and location of students with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located in the school district served by the LEA, provision is made for the participation of those students in the program assisted or carried out under part B of the IDEA by providing them with special education and related services, including direct services determined in accordance with §137 unless the secretary has arranged for services to those students under the by-pass provision in 34 CFR §§300.190 through 300.198.

B. Services Plan for Parentally-Placed Private School Students with Disabilities. In accordance with Subsection A of this Section and §§137 through 139, a services plan shall be developed and implemented for each private school student with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under these regulations.

C. Recordkeeping. Each LEA shall maintain in its records and provide to the LDE, the following information related to parentally-placed private school students covered under §§130 through 144:

1. the number of students evaluated;

2. the number of students determined to be students with disabilities; and

3. the number of students served.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§133. Expenditures

A. Formula. To meet the requirement of §132.A, each LEA shall spend the following on providing special education and related services (including direct services) to parentally-placed private school students with disabilities.

1. For students aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the IDEA as the number of private school students with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of students with disabilities in its jurisdiction aged 3 through 21.

2.a. For students aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the IDEA as the number of parentally-placed private school students with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA is to the total number of students with disabilities in its jurisdiction aged three through five.

b. As described in Subparagraph A.2.a of this Section, students with disabilities aged three through five are considered to be parentally-placed private school students with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §905.

3. If an LEA has not expended for equitable services all of the funds described in Paragraphs A.1 and A.2 of this Section by the end of the fiscal year for which Congress appropriated the funds, the LEA shall obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school students with disabilities during a carry-over period of one additional year.

B. Calculating Proportionate Amount. In calculating the proportionate amount of federal funds to be provided for parentally-placed private school students with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §134, shall conduct a thorough and complete Child Find process to determine the number of parentally-placed private school students with disabilities attending private schools located in the LEA. (See Appendix B of the IDEA part B Regulations for an example of how proportionate share is calculated.)

C. Annual Count of the Number of Parentally-Placed Private School Students with Disabilities

1. Each LEA shall:

a. after timely meaningful consultation with representatives of parentally-placed private school students with disabilities (consistent with §134), determine the number of parentally-placed private school students with disabilities attending private schools located in the LEA; and

b. ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

2. The count shall be used to determine the amount that the LEA shall spend on providing special education and related services to parentally-placed private school students with disabilities in the next subsequent fiscal year.

D. Supplement, Not Supplant. State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally-placed private school students with disabilities under these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§134. Consultation

A. To ensure timely and meaningful consultation, an LEA, or, if appropriate, the LDE, shall consult with private school representatives and representatives of parents of parentally-placed private school students with disabilities during the design and development of special education and related services for the students regarding the following.

1. Child Find. The Child Find process, including:

a. how parentally-placed private school students suspected of having a disability can participate equitably; and

b. how parents, teachers, and private school officials will be informed of the process.

2. Proportionate Share of Funds. The determination of the proportionate share of federal funds available to serve parentally-placed private school students with disabilities under §133.B, including the determination of how the proportionate share of those funds was calculated.

3. Consultation Process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school students with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed students with disabilities identified through the child find process can meaningfully participate in special education and related services.

4. Provision of Special Education and Related Services. How, where, and by whom special education and related services will be provided for parentally-placed private school students with disabilities, including a discussion of:

a. the types of services, including direct services and alternate service delivery mechanisms; and

b. how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school students; and

c. how and when those decisions will be made.

5. Written Explanation by LEA Regarding Services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the type of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§135. Written Affirmation

A. When timely and meaningful consultation, as required by §134, has occurred, the LEA shall obtain a written affirmation signed by the representatives of participating private schools.

B. If the representatives do not provide the affirmation within a reasonable period of time, the LEA shall forward the documentation of the consultation process to the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§136. Compliance

A. General. A private school official has the right to submit a complaint to the LDE that the LEA:

1. did not engage in consultation that was meaningful and timely; or

2. did not give due consideration to the views of the private school officials.

B. Procedure:

1. if the private school official wishes to submit a complaint, the official shall provide to the LDE the basis of the noncompliance by the LEA with the applicable private school provisions in these regulations; and

2. the LEA shall forward the appropriate documentation to the LDE.

3.a. if the private school official is dissatisfied with the decision of the LDE, the official may submit a complaint to the secretary by providing the information on noncompliance described in Paragraph B.1 of this Section; and

b. the LDE shall forward the appropriate documentation to the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§137. Equitable Services Determined

A. No Individual Right to Special Education and Related Services. No parentally-placed private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.

B. Decisions

1. Decisions about the services that will be provided to parentally-placed private school students with disabilities under §§130 through 144 shall be made in accordance with Subsection C of this Section and §134.A.3.

2. The LEA shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school students with disabilities.

C. Services Plan for Each Student Served under §§130 through 144. If a student with a disability is enrolled in a religious or other private school by the student's parents and will receive special education or related services from an LEA, the LEA shall:

1. initiate and conduct meetings to develop, review and revise a services plan for the student in accordance with §138; and

2. ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§138. Equitable Services Provided

A. General

1. The services provided to parentally-placed private school students with disabilities shall be provided by personnel meeting the same standards as personnel

providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school students with disabilities do not have to meet the highly qualified special education teacher requirements contained in the definition of highly qualified special education teachers in §905.

2. Parentally-placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools.

B. Services Provided in Accordance with a Services Plan

1. Each parentally-placed private school student with a disability who has been designated to receive services under §132 shall have a services plan that describes the specific special education and related services that the LEA will provide to the student in light of the services that the LEA has determined, through the process described in §§134 and 137, it will make available to parentally-placed private school students with disabilities.

2. The services plan shall, to the extent appropriate:

a. meet the requirements at §320, or for a child ages three through five, meet the requirements of §323.B with respect to the services provided; and

b. be developed, reviewed, and revised consistent with §§321 through 324.

C. Provision of Equitable Services

1. The provision of services pursuant to this Section and §§139 through 143 shall be provided:

a. by employees of a public agency; or

b. through contract by the public agency with an individual, association, agency, organization, or other entity.

2. Special education and related services provided to parentally-placed private school students with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§139. Location of Services and Transportation

A. Services on Private School Premises. Services to parentally-placed private school students with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

B. Transportation

1. General

a. If necessary for the student to benefit from or participate in the services provided under these regulations, a parentally-placed private school student with a disability shall be provided transportation:

i. from the student's school or the student's home to a site other than the private school; and

ii. from the service site to the private school, or to the student's home, depending on the timing of the services.

b. LEAs are not required to provide transportation from the student's home to the private school.

2. Cost of Transportation. The cost of the transportation described in Subparagraph B.1.a of this Section may be included in calculating whether the LEA has met the requirements of §133.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§140. Requests for Due Process Hearings and State Complaints

A. Due Process not Applicable, Except for Child Find

1. Except as provided in Subsection B of this Section, the procedures in §505 through 519 do not apply to requests for due process hearings alleging that an LEA has failed to meet the requirements of §§132 through 139, including the provision of services indicated on the student's services plan.

B. Child Find complaints—to be filed with the LEA in which the private school is located.

1. The procedures in §505 through 519 apply to requests for due process hearings alleging that an LEA has failed to meet the Child Find requirements, in §131, including the requirements in §§301 through 308.

2. Any request for due process hearing regarding the child find requirements (as described in Paragraph B.1 of this Section) shall be filed with the LEA in which the private school is located and a copy shall be forwarded to the LDE.

C. State Complaints

1. Any complaint that the LDE or LEA has failed to meet the requirements in §§132 through 135 and 137 through 144 shall be filed in accordance with the procedures described in §§151 through 153.

2. A complaint filed by a private school official under §136.A shall be filed with the LDE in accordance with the procedures in §136.B.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§141. Requirement that Funds not Benefit a Private School

A. The LEA may not use funds provided under §611 or §619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.

B. The LEA shall use funds provided under part B of the IDEA to meet the special education and related services needs of parentally-placed private school students with disabilities, but not for meeting:

1. the needs of a private school; or

2. the general needs of the students enrolled in the private school.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§142. Use of Personnel

A. Use of Public School Personnel. An LEA may use funds available under §§611 and 619 of the IDEA to make public school personnel available in other than public facilities:

1. to the extent necessary to provide services under §§130 through 144 for parentally-placed private school students with disabilities; and

2. if those services are not normally provided by the private school.

B. Use of Private School Personnel. An LEA may use funds available under §§611 and 619 of the IDEA to pay for the services of an employee of a private school to provide services under §§130 through 144 if:

1. the employee performs the services outside of his or her regular hours of duty; and

2. the employee performs the services under public supervision and control.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§143. Separate Class Prohibited

A. An LEA may not use funds available under §§611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if:

1. the classes are at the same site; and

2. the classes include students enrolled in public schools and students enrolled in private schools.

A§UTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§144. Property, Equipment, and Supplies

A. A public agency shall control and administer the funds used to provide special education and related services under §§137 through 139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the IDEA.

B. The public agency may place equipment and supplies in a private school for the period of time needed for the IDEA part B program.

C. The public agency shall ensure that the equipment and supplies placed in a private school:

1. are used only for part B purposes; and

2. can be removed from the private school without remodeling the private school facility.

D. The public agency shall remove equipment and supplies from a private school if:

1. the equipment and supplies are no longer needed for IDEA part B purposes; or

2. removal is necessary to avoid unauthorized use of the equipment and supplies for other than IDEA part B purposes.

E. No funds under part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter G. Students with Disabilities in Private Schools Placed or Referred by Public Agencies

§145. Applicability of §§146 through 147

A. Sections 146 through 147 apply only to students with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§146. Responsibility of the LDE

A. The LDE shall ensure that a student with a disability who is placed in or referred to a private school or facility by a public agency:

1. is provided special education and related services:

a. in conformance with an IEP that meets the requirements of §§320 through 325; and

b. at no cost to the parents;

2. is provided an education that meets the standards that apply to education provided by the LDE and LEAs including the requirements of these regulations, except for requirements contained in the definition of highly qualified special education teachers in §905 and §156.C; and

3. has all of the rights of a student with a disability who is served by a public agency.

B. When it is necessary to provide special education and related services in programs other than public schools, these placements must not occur until it has been determined by the LDE that the student cannot be appropriately educated by another public agency of the state. After determination has been made that neither the public schools nor another public agency of the state can adequately provide special education and related services, then private programs within the state may be considered. If these programs are still inadequate to meet the educational needs of the student, then out-of-state private programs may be approved.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§147. Implementation by the LDE

A. In implementing §146, the LDE shall:

1. monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

2. disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a student with a disability; and

3. provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter H. Students with Disabilities Enrolled by their Parents in Private Schools when FAPE is an Issue

§148. Placement of Students by Parents when FAPE is at Issue

A. General. These regulations do not require an LEA to pay for the cost of the education, including special education and related services, of a student with a disability at a private school or facility if that agency made a FAPE available to the student, and the parents elected to place the student in a private school or facility. However, the public agency shall include that student in the population whose needs are addressed consistent with §§131 through 144.

B. Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the student, and the question of financial reimbursement, are subject to the due process procedures in §§505 through 520.

C. Reimbursement for Private School Placement. If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a

hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if the placement does not meet the state standards that apply to education provided by the LEAs and the LDE.

D. Limitation on Reimbursement. The cost of reimbursement described in Subsection C of this Section may be reduced or denied:

1. if:

a. at the most recent IEP Team meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to the student, including stating their concerns and their intent to enroll their child in a private school at public expense; or

b. at least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the public agency of the information described in Subparagraph D.1.a of this Section;

2. if, prior to the parents' removal of the student from the public school, the public agency informed the parents, through the notice requirements described in §504.A.1, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

3. if, upon a judicial finding of unreasonableness with respect to actions taken by the parents.

E. Exception. Notwithstanding the notice requirement in Paragraph D.1 of this Section, the cost of reimbursement:

1. shall not be reduced or denied for failure to provide the notice if:

a. the school prevented the parents from providing the notice;

b. the parents had not received notice, pursuant to §505, of the notice requirement in Paragraph D.1 of this Section; or

c. compliance with Paragraph D.1 of this Section would likely result in physical harm to the student; and

2. may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:

a. the parents are not literate or cannot write in English; or

b. compliance with Paragraph D.1 of this Section would likely result in serious emotional harm to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter I. LDE Responsibilities for General Supervision and Implementation of Procedural Safeguards

§149. LDE Responsibility for General Supervision

A. The LDE shall ensure:

1. that all requirements under these regulations are carried out; and

2. that each educational program for students with disabilities administered within the state, including each program administered by any other state or local agency (but not including elementary schools and secondary schools for Indian students operated or funded by the Secretary of the Interior):

a. is under the general supervision of the persons responsible for educational programs for students with disabilities in the state; and

b. meets the educational standards of the LDE (including the requirements of these regulations).

3. In carrying out these regulations with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

B. The LDE adopts written procedures in *Bulletin 1922—Compliance Monitoring Procedures*, as well as the provisions of §601, to ensure that it complies with the monitoring and enforcement requirements in §§601 through 606.

C. Part B of the IDEA does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to students with disabilities in the state.

D. Notwithstanding Subsection A of this Section, the governor (or another individual pursuant to State law) may assign to any public agency in the state the responsibility of ensuring that the requirements of part B of the IDEA are met with respect to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§150. LDE Implementation of Procedural Safeguards

A. The LDE (and any agency assigned responsibility pursuant to §149D) shall have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the students with disabilities served by that public agency.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter J. State Complaint Procedures

§151. Adoption of State Complaint Procedures and Early Resolution Program

A. General. The LDE adopts written procedures herein and in *Bulletin 1573—Complaint Management Procedures*, for:

1. the purpose of resolving any complaint relating to the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) to a student with a disability, including a complaint filed by an organization or individual from another state, that meets the requirements of §151 through153 by providing:

a. for the implementation of an Early Resolution Process (ERP); and/or

b. the filing of a formal written complaint with the LDE.

B. The LDE shall widely disseminate to parents and other interested individuals, including parent training and

information centers, protection and advocacy agencies, independent living centers, and other appropriate entities:

1. the state procedures under §§151 through 153 and *Bulletin 1573—Complaint Management Procedures*; and

2. the appropriate contact information for LEAs and other public agencies serving students.

C. Informal Complaints. It is the policy of the LDE to encourage and support prompt and effective resolution of any complaint described in §151.A.1 in the least adversarial manner possible. The LDE shall effect such policy to promote dispute prevention and the swift resolution of disputes by implementing an Early Resolution process.

1. Early Resolution Process (ERP)—an ongoing and systematic, informal dispute resolution process.

a. ERP shall include a systematic, local level process for the prompt and orderly resolution of complaints by each public educational agency, including public charter schools.

b. Each LEA in the state shall establish an internal ERP in accordance with standards outlined in *Bulletin 1573—Complaint Management Procedures*, which shall include:

i. the designation of a local ERP representative and notice of the name, address, telephone number; and

ii. other contact information for the LEA's designated ERP representative.

c. The implementation of the ERP by each LEA draws on the traditional model of parents and schools working cooperatively in the educational interest of the student to achieve their shared goal of meeting the educational needs of students with disabilities.

d. To promote the cooperative resolution of complaints at the local level, the LDE shall not be involved in the informal resolution process (ERP) implemented at the local level, but shall route to the public agency's ERP representative, verbal and other informal complaints or allegations received by the LDE.

2. Requesting ERP. A parent, adult student, individual, or organization shall initiate a request for ERP on one or more issues described in §151.A.1 by contacting the local level ERP representative or the LDE's ERP Intake Coordinator(s) by telephone, U.S. mail, facsimile, email, or TDD.

a. Informal complaints to the LDE shall only be made through the LDE's Intake Coordinator(s) who shall refer the complaint to the ERP representative of the LEA immediately, if possible, but not later than two calendar days after receiving the complaint.

b. The LDE's Intake Coordinator(s) shall:

i. be the LDE's only designated individual(s) to perform complaint intake duties and responsibilities;

ii. not have a *juris doctorate* degree;

iii. have completed specific training in accepted methods and practices for recording information in a neutral and confidential manner; and

iv. perform duties consisting of receipt of informal complaints and request for ERP; providing local agency ERP contact information to the complainant(s); and referral of such informal complaint or ERP request to the local agency's ERP Representative in accordance with Subsection C of this Section.

3. Early Resolution Period. If a resolution of the informal complaint cannot be achieved within 15 calendar days of the public agency's receipt of the complaint, or an extended period agreed upon by the parties in writing, the LEA's ERP representative shall advise the complainant of the availability of other dispute resolution processes available through the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§152. Formal Complaints Filing and Content Requirements

A. An organization or individual, including those from another state, may file a signed written complaint under the procedures described in §§151 through 153.

B. The complaint shall include:

1. a statement that a public agency has violated a requirement of part B of the IDEA or these regulations;

2. the facts on which the statement is based;

3. the signature and contact information for the complainant; and

4. if alleging violations with respect to a specific student:

a. the name and address of the residence of the student;

b. the name of the school the student is attending;

c. in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;

d. a description of the nature of the problem of the student, including facts relating to the problem; and

e. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

C. The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §§151 through 153.

D. The party filing the complaint shall forward a copy of the complaint to the LEA or public agency serving the student, at the same time the party files the complaint with the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§153. Formal Complaint Procedures

A. Time Limit; Minimum Procedures. Upon receipt of a signed written complaint filed under §152, the LDE shall refer the complaint to the ERP representative in accordance with §151.

1. The LDE shall:

a. not commence investigation of a complaint until the expiration of the informal resolution period described in §151.C.3; but

b. shall complete its investigation of unresolved allegations and issue a decision within 45 days after the expiration of the early resolution period in accordance with the procedures contained in this Section.

2. Upon expiration of the resolution period, the LDE shall review the allegations contained in the complaint and shall provide written notice to the LEA or public agency serving the student, including the following:

a. a request for specific information needed by the LDE to carry out its independent investigation of the complaint;

b. reasonable timelines established for providing such information to the LDE;

c. a statement of the opportunity to respond to the complaint, including at a minimum:

i. the opportunity to provide a proposal to resolve the complaint, at their discretion; and

ii. the opportunity to offer to the parent who has filed a complaint, mediation consistent with §506 or neutral IEP facilitation as available through the LDE.

B. The LDE shall provide written notice to the complainant including a statement of the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

C. All information relevant to the complaint shall be reviewed by the LDE, and a decision shall be made as to whether an independent on-site investigation is needed.

D. The LDE shall review all relevant information and make an independent determination as to whether the public agency is violating a requirement of part B of the IDEA.

E. Decision. Within 45 days of expiration of the early resolution process, the LDE shall issue a written decision to the complainant and the public agency that addresses each remaining allegation of the complaint and contains:

1. findings of fact and conclusions; and

2. the reasons for the LDE's final decision.

F. Time Extension; Final Decision; Implementation. The LDE shall permit an extension of the time limit under Subsection A of this Section only if:

1. exceptional circumstances exist with respect to a particular complaint; or

2. the parent (or individual or organization) and the public agency involved agree to extend the time to engage in mediation, IEP facilitation, or other alternative means of dispute resolution.

G. Complaints Filed under this Section and Due Process Hearings Under §507 and §§530 through 532.

1. If a written complaint received is also the subject of a due process hearing under §507 or §§530 through 532 or, if it contains multiple issues, of which one or more is part of that hearing, the LDE shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue of the complaint that is not a part of the due process action shall be resolved, using the time limit and procedures described in Subsections A and B of this Section.

2. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:

a. the due process hearing decision shall be binding on that issue; and

b. the LDE shall inform the complainant to that effect.

3. A complaint alleging an agency's failure to implement a due process hearing decision shall be resolved by the LDE.

H. Remedies for Denial of Appropriate Services. In resolving a complaint in which it has found a failure to provide appropriate services, the LDE, pursuant to its general supervisory authority under part B of the IDEA, shall address:

1. the failure to provide appropriate services including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement); and

2. appropriate future provision of services for all students with disabilities.

I. Reconsideration Requests. If either the public agency or the complainant believes that the LDE has made an error in one or more findings of fact and/or law, a reconsideration of the investigative findings and decision may be requested, in writing, to the LDE's legal division in accordance with the following procedures:

1. the request shall be simultaneously submitted to the LDE and the other party subject to the complaint; and

2. for each error submitted for reconsideration, the requestor shall provide the reference number assigned by the LDE to the complaint at issue; the page number of the written decision where such alleged error can be found; highlighted sections of data submitted for investigation that would assert a fact contrary to what is reflected in the written decision; and citations to applicable law, regulations, or jurisprudence, where applicable, to support the alleged error of law; and

3. the requestor shall provide a written explanation that indicates how originally-submitted documentation changes the respective finding(s) of fact or law and/or how the alleged error impacts the conclusion of the LDE with respect to the allegation(s) at issue;

4. documents and other information not originally submitted regarding the allegation(s) shall not be accepted for review; and

5. reconsideration requests, including all documentation relevant to the reconsideration request, shall be received by the LDE no later than 10 calendar days after the date of receipt of the investigative report. Should the other party to the complaint wish to respond to the reconsideration request, the response shall be received by the LDE no later than 10 calendar days after the LDE received the original reconsideration request; and

6. reconsideration requests received by the LDE after the 10 calendar day deadline shall not be reviewed;

7. reconsideration requests received timely and that meet criteria established by this subsection shall be reviewed by a panel of individuals appointed by the division director and the LDE shall inform the complainant and the public agency of its determinations, in writing, within 30 calendar days from the date the LDE receives the written reconsideration request;

8. reconsideration requests by third parties shall not be accepted;

9. reconsideration requests shall not be used to delay or deny implementation of FAPE for a student with a disability.

J. The LDE shall ensure effective implementation of the final decision, if needed, including:

1. technical assistance activities;

2. negotiations; and

3. corrective actions to achieve compliance.

K. Correction of Non-Compliance. If a complaint results in a finding of non-compliance, the public agency shall be required to document that it has taken corrective action as required by the complaint decision.

1. The LDE shall refer and recommend to BESE the delay or denial of funding or an offset of future funding for any LEA that, after due notice:

a. refuses or fails to submit requested documentation of corrective action; or

b. refuses or fails to take or complete required corrective action.

2. The state board shall provide reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 34 CFR 76.401 before the LDE delays, denies, or offsets the funding of any LEA under IDEA part B.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter K. Methods of Ensuring Services

§154. Methods of Ensuring Services

A. Establishing Responsibility for Services. The governor of Louisiana or the designee of the governor shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in Subsection B of this Section and the LDE, in order to ensure that all services described in Subsection B of this Section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under Paragraph A.3 of this Section. The agreement or mechanism shall include the following:

1. an identification of, or a method for defining, the financial responsibility of each agency for providing services described in Paragraph B.1 of this Section to ensure FAPE to students with disabilities. The financial responsibility of each non-educational public agency described in Subsection B of this Section, including the state Medicaid agency and other public insurers of students with disabilities, shall precede the financial responsibility of the LEA (or the state agency responsible for developing the student's IEP).

2. the conditions, terms, and procedures under which an LEA shall be reimbursed by other agencies.

3. procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

4. policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in Paragraph B.1 of this Section.

B. Obligation of Non-Educational Public Agencies

1.a. If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to Subsection A of this Section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §905 relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to students with disabilities within the state, the public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to Subsection A of this Section or an agreement pursuant to Subsection C of this Section.

b. A non-educational public agency described in Subparagraph B.1.a of this Section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

2. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in Paragraph B.1 of this Section, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency shall reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in Subsection A of this Section.

C. Special Rule. The requirements of Subsection A of this Section may be met through:

1. state statute or regulation;

2. signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

3. other appropriate written methods as determined by the governor or designee and approved by the secretary.

D. Students with Disabilities Who Are Covered by Public Benefits or Insurance.

1. A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under these regulations, as permitted under the public benefits or insurance program, except as provided in Paragraph D.2 of this Section.

2. With regard to services required to provide FAPE to an eligible student under these regulations, the public agency:

a. may not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under part B of the IDEA;

b. may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to, these regulations, but pursuant to Paragraph G.2 of this Section, may pay the cost that the parents otherwise would be required to pay;

c. may not use a student's benefits under a public benefits or insurance program if that use would:

i. decrease available lifetime coverage or any other insured benefit;

ii. result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

iii. increase premiums or lead to the discontinuation of benefits or insurance; or

iv. risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

d.i. shall obtain parental consent as defined in §905, to access public benefits or insurance one time for the specific services and duration of services identified in a student's IEP unless IEP revisions require additional services that would result in additional charges to the student's or parents' public benefits or public insurance. Such consent to access public benefits may be obtained at an IEP meeting or at some time after the IEP is developed; and

ii. notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

E. Students with Disabilities Who Are Covered by Private Insurance

1. With regard to services required to provide FAPE to an eligible student under these regulations, a public agency may access the parents' private insurance proceeds only if the parents provide informed consent as defined in §905.

2. Each time the public agency proposes to access the parents' private insurance proceeds, the agency shall:

a. obtain parental consent in accordance with Paragraph E.1 and D.2.d.i of this Section; and

b. inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

F. Use of Part B Funds

1. If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under these regulations, to ensure FAPE, the public agency may use its part B funds to pay for the service.

2. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

G. Proceeds from Public Benefits or Insurance or Private Insurance

1. Proceeds from public benefits or insurance or private insurance shall not be treated as program income for purposes of 34 CFR 80.25.

2. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under these regulations, those funds shall not be considered "state or local" funds for purposes of the maintenance of effort provisions in 34 CFR 300.163 and 300.203.

H. Construction. Nothing in these requirements should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter L. Additional Eligibility Requirements

§155. Hearings Relating to LEA Eligibility

A. The state board shall provide a reasonable notice and an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 34 CFR 76.401d before the LDE determines any LEA is ineligible for assistance under part B of the IDEA or before the LDE finds that an LEA is failing to comply with any requirements of the application. (different or exceeds)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§156. Personnel Qualifications

A. General. The LDE shall establish and maintain qualifications through *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, to ensure that personnel necessary to carry out the purposes of these regulations are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities.

B. Related Services Personnel and Paraprofessionals. The qualifications under Subsection A of this Section, found in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, include qualifications for related services personnel and paraprofessionals.

C. Qualifications for Special Education Teachers. The qualifications described in Subsection A of this Section shall ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

D. Policy. The LDE's required policy for ensuring that LEAs in the state take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under these regulations to students with disabilities is established in *Bulletin 741—Louisiana Handbook for School Administrators.*

E. Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular LDE employee or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the LDE as provided for under these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§157. Performance Goals and Indicators

A. The LDE shall have in effect goals for the performance of students with disabilities in the state that:

1. promote the purposes of these regulations as stated in §901;

2. are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students with

disabilities, under section 1111(b)(2)(c) of the ESEA, 20 U. S. C. 6311;

3. address graduation rates and dropout rates, as well as such other factors as the state may determine; and

4. are consistent, to the extent appropriate, with any other goals and academic standards for students established by the state.

B. The LDE shall have in effect performance indicators that the state will use to assess progress toward achieving the goals described in Subsection A of this Section, including measurable annual objectives for progress by students with disabilities under section 1111(b)(2)(C) of the ESEA, 20 U. S. C. 6311.

C. The LDE shall annually report to the secretary and the public on the progress of the state, and of students with disabilities in the state, toward meeting the goals established under Subsection A of this Section, which may include elements of the reports required under section 1111(h) of the ESEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§158-159. Reserved.

§160. Participation in Assessments

A. General. The LDE shall ensure that all students with disabilities are included in all general state and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

B. Accommodation Guidelines

1. The LDE's guidelines for providing appropriate accommodations are established in *Bulletin 111—The School, District, and State Accountability System*, for the provision of appropriate accommodations. In case of district-wide assessment programs, the LEA shall establish those guidelines.

2. The LDE's (or, in the case of a district-wide assessment, the LEA's) guidelines shall:

a. identify only those accommodations for each assessment that do not invalidate the score; and

b. instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.

C. Alternate Assessments

1. The LDE's guidelines to implement alternate assessments and guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in Subsection A of this Section, are detailed in *Bulletin 111—The School, District, and State Accountability System*. In case of district-wide assessment programs, the LEA shall develop and implement those guidelines.

2. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in Subparagraph C.1 of this Section shall provide for alternate assessments that:

a. are aligned with the state's challenging academic content standards and challenging student academic achievement standards;

b. measure the achievement of students with disabilities meeting the state's criteria under Sec. 200.1(e)(2) against those modified academic achievement standards; and

c. measure the achievement of students with the most significant cognitive disabilities against those alternate academic achievement standards.

D. Explanation to IEP Teams. The LDE (or in the case of a district-wide assessment, an LEA) shall provide IEP Teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

E. Inform Parents. The LDE (or, in the case of a district-wide assessment, an LEA) shall ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

F. Reports. The LDE (or, in the case of a district-wide assessment, an LEA) shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of non-disabled students, the following:

1. the number of students with disabilities participating in regular assessments, and the number of those students who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments;

2. the number of students with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards;

3. the number of students with disabilities, if any, participating in alternate assessments based on modified academic achievement standards;

4. the number of students with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards;

5. compared with the achievement of all students, including students with disabilities, the performance results of students with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards, and alternate assessments based on alternate academic achievement standards if:

a. the number of students participating in those assessments is sufficient to yield statistically reliable information; and

b. reporting that information will not reveal personally identifiable information about an individual student on those assessments.

G. Universal Design. The LDE (or, in the case of a district-wide assessment, an LEA) shall, to the extent possible, use universal design principles in developing and administering any assessments under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§161. Reserved.

§162. Supplementation of State, Local, and other Federal Funds

A. Funds paid to the state under these regulations shall be administered in accordance with 34 CFR 300.162 through 164 and 300.166.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§163-164. Reserved.

§165. Public Participation

A. Prior to the adoption of any policies and procedures needed to comply with part B of the IDEA (including any amendments to those policies and procedures), the LDE shall ensure that there are public hearings, adequate notice of the hearings, and opportunity for comment available to the general public, including individuals with disabilities and parents of students with disabilities by one or more of the following methods:

1. receiving input from the State Advisory Panel regarding proposed changes in policies and procedures;

2. submitting proposed revisions of policies and procedures to the State Board of Elementary and Secondary Education for advertisement, and as appropriate, as a Notice of Intent in the *Louisiana Register*;

3. publishing through one of the following media: newspapers, the LDE's official website, libraries, school board offices the timetable for final approval, the procedures for submitting written comments, and a list of the dates, times and places of public meetings to be held;

4. distributing to interested parties, and posting the policies and procedures on the LDE's official internet website for public comment.

B. Before submitting a state plan under these regulations, the LDE shall comply with the public participation requirements in Subsection A of this Section and those in 20 U.S.C. 1232d(b)(7).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§166. Reserved.

Subchapter M. State Advisory Panel

§167. State Advisory Panel (State Special Education Advisory Council)

A. The advisory panel is established and shall be maintained by the LDE for the purpose of providing policy guidance with respect to special education and related services for students with disabilities in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§168. Membership

A. General. The advisory panel shall consist of members appointed and approved by the state board and shall be representative of the state population and be composed of individuals involved in or concerned with the education of students with disabilities, including:

1. parents of children with disabilities (ages birth through 26);

2. individuals with disabilities;

3. teachers;

4. representatives of institutions of higher education that prepare special education and related service personnel;

5. state and local education officials, including officials who carry out activities under the McKinney-Vento Homeless Assistance Act;

6. administrators of programs for students with disabilities;

7. representatives of other state agencies involved in the financing or delivery of related services to students with disabilities;

8. representatives of private schools and public charter schools;

9. not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities;

10. a representative from the state child welfare agency responsible for foster care; and

11. representatives from the state juvenile and adult corrections agencies.

B. Special Rule. A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through twenty-six).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§169. Duties

A. The advisory panel shall perform the following prescribed duties in matters concerning the education of students with disabilities:

1. advise the state board and the LDE of unmet needs within the state in the education of students with disabilities;

2. comment publicly on any rules or regulations proposed by the state board and the LDE regarding the education of students with disabilities;

3. advise the state board and the LDE in developing evaluations and reporting on data to the secretary under section 618 of the IDEA;

4. advise the state board and the LDE in developing corrective action plans to address findings identified in federal monitoring reports under part B of the IDEA; and

5. advise the state board and the LDE in developing and implementing policies related to the coordination of services for students with disabilities.

B. The advisory panel shall conduct its activities according to procedures prescribed by the state board.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter N. Other Provisions required for State Eligibility

§170. Suspension and Expulsion Rates

A. General. The LDE shall examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:

1. among the LEAs in the state; or

2. compared to the rates for non-disabled students within those agencies.

B. Review and Revision of Policies. If the discrepancies described in Subsection A of this Section are occurring, the LDE shall review and, if appropriate, revise its policies, procedures, and practices or require the affected LEA to revise its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§171. Annual Description of Use of Part B Funds

A. In order to receive a grant in any fiscal year, the LDE shall comply with 34 CFR §300.171.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§172. Access to Instructional Materials

A. General. The LDE adopted the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to part 300 of the IDEA, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after publication of the NIMAS in the *Federal Register* on July 19, 2006 (71 FR 41084) and consistent with *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual*.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§173. Overidentification and Disproportionality

A. Consistent with the purposes of these regulations and with section 618(d) of the IDEA, the LDE establishes the following policies and procedures to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of students as students with disabilities, including students with disabilities with a particular impairment as defined in §905.

1. The LDE shall annually collect and analyze data described in Subsecction A above.

2. When data described in Subsection A. above indicate overidentification or disproportionate identification, the LDE shall review the policies, procedures, and practices of the LDE or the affected LEA.

3. When the review indicates inappropriate identification, the LDE shall require the revision of the LDE's or the affected LEA's policies, procedures, and practices to ensure compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§174. Prohibition on Mandatory Medication

A. General. LDE and LEA personnel shall not require a student to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202 (c) of the Controlled Substance Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§301 through 308, or receiving services under these regulations.

B. Rule of Construction. Nothing in Subsection A of this Section shall be construed to create a prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for *special education* or *related services* as defined in §905 (related to Child Find).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§175. The LDE as Provider of FAPE or Direct Services

A. If the LDE provides FAPE to students with disabilities, or provides direct services to these students, the agency:

1. shall comply with any additional requirements of §§202 and 203 and §§207 through 226 as if the agency were an LEA; and

2. shall use amounts that are otherwise available to the agency under part B of the IDEA to serve those students without regard to §203.B (relating to excess costs).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§176-189. Reserved.

§190. By-Pass for Students in Private Schools

A. Procedures governing the determination by the secretary to implement a by-pass for the state, an LEA, or other public agency are governed in accordance with 34 CFR §§300.190 through 198.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§191.-198. Reserved.

§199. State Administration

A. Rulemaking. The LDE, when receiving funds under part B of IDEA, shall:

1. ensure that any state rules, regulations, and policies relating to these regulations conform to the purposes of these regulations;

2. identify in writing to local education agencies and the secretary of the U.S. Department of Education any rule, regulation, or policy as a state-imposed requirement that is not required by part B of IDEA and 34 CFR §300.1 et seq.; and

3. minimize the number of rules, regulations, and polices to which the local education agencies and schools located in the state are subject under part B of the IDEA.

B. Support and Facilitation. State rules, regulations, and policies under part B of the IDEA shall support and facilitate LEA and school-level system improvement designed to enable students with disabilities to meet the challenging state student academic achievement standards.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Chapter 2. Local Educational Agency Eligibility

§201. Condition of Assistance

A. An LEA is eligible for assistance under part B of the IDEA for a fiscal year if the agency submits a plan that provides assurances to the LDE that the LEA meets each of the conditions in §§202 through 214.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§202. Consistency with State Policies

A. The LEA, in providing for the education of students with disabilities within its jurisdiction, shall have in effect policies, procedures, and programs that are consistent with the state's policies and procedures established under §§101 through 162, and §§165 through 174.

B. In meeting the requirements in Subsection A of this Section, the LEA may provide special education and related services through cooperative agreements with other LEAs, by contract, or through other arrangements.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§203. Use of Amounts

A. General. Amounts provided to the LEA under part B of the IDEA:

1. shall be expended in accordance with applicable provisions of these regulations;

2. shall be used only to pay the excess cost of providing special education and related services to students with disabilities, consistent with Subsection B of this Section; and

3. shall be used to supplement state, local, and other federal funds and not to supplant those funds.

B. Excess Cost Requirement

1. General

a. The excess cost requirement prevents an LEA from using funds provided under part B of the IDEA to pay for all of the costs directly attributable to the education of a student with a disability, subject to Subparagraph B.1.b of this Section.

b. The excess cost requirement does not prevent an LEA from using part B funds to pay for all of the costs directly attributable to the education of a student with a disability in any of the ages of 3, 4, 5, 18, 19, 20, or 21, if no local or state funds are available for non-disabled students of these ages. However, the LEA shall comply with the non-supplanting and other requirements of these regulations, in providing the education and services for these students. IDEA part B funds received shall not be commingled with state funds.

2.a. An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of each of its students with disabilities before funds under part B of the IDEA are used.

b. The amount described in Subparagraph B.2.a is determined in accordance with the definition of *excess cost* in §905 and that amount may not include capital outlay or debt service.

3. If two or more LEAs jointly establish eligibility in accordance with §223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of *excess costs* in §905 in those agencies for elementary or secondary school students, as the case may be.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§204. Maintenance of Effort

A. General. Except as provided in §§205 and 206, funds provided to an LEA under part B of the IDEA shall not be used to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

B. Standard

1. Except as provided in Subparagraph B.2 of this Section, the LDE shall determine that an LEA complies with Subsection A of this Section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

a. local funds only.

b. the combination of state and local funds.

2. An LEA that relies on Subparagraph B.1.a of this Section for any fiscal year shall ensure that the amount of local funds it budgets for the education of students with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in Subparagraph B.1.a of this Section was used to establish its compliance with this section.

3. The LDE may not consider any expenditures made from funds provided by the federal government for which the LDE is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the LDE in determining an LEA's compliance with the requirement in Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§205. Exception to Maintenance of Effort

A. Notwithstanding the restriction in §204.A, an LEA may reduce the level of expenditures by the LEA under part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

1. the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

2. a decrease in the enrollment of students with disabilities;

3. the termination of the obligation of the agency, consistent with these regulations, to provide a program of special education to a particular student with a disability that is an exceptionally costly program, as determined by the LDE, because the student:

a. has left the jurisdiction of the agency;

b. has reached the age at which the obligation of the agency to provide FAPE to the student has terminated; or

c. no longer needs the program of special education.

B. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

C. The assumption of cost by the high cost fund operated by the LDE under 34 CFR 300.704(c).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§206. Adjustment to Local Fiscal Efforts in Certain Fiscal Years

A. Amounts in Excess. Notwithstanding §203.A.2 and B and §204.A, and except as provided in Subsection D of this Section and 34 CFR 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under §705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §204.A by not more than 50 percent of the amount of that excess.

B. Use of Amounts to Carry Out Activities Under ESEA. If an LEA exercises the authority under Subsection A of this Section, the LEA shall use an amount of local funds equal to the reduction in expenditures under Subsection A of this Section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

C. State Prohibition. Notwithstanding Subsection A of this Section, if the LDE determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirement of Section 613(a) of the IDEA and these regulations or the LDE has taken action against the LEA under section 616 of the IDEA and Chapter Six of these regulations, the LDE shall prohibit the LEA from reducing the level of expenditure under Subsection A of this Section for that fiscal year.

D. Special Rule. The amount of funds expended by the LEA for early intervening services under §226 shall count toward the maximum amount of expenditure that the LEA may reduce under Paragraph 1 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§207. School-wide Programs under Title I of the ESEA

A. General. Notwithstanding the provisions of §203 and 204 or any other provision of part B of the Act, an LEA may use funds received under part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the ESEA, except that the amount used in any school-wide program may not exceed:

1.a. the amount received by the LEA under part B of the Act for that fiscal year; divided by

b. the number of students with disabilities in the jurisdiction of the LEA; and multiplied by

2. the number of students with disabilities participating in the school-wide program.

B. Funding Conditions. The funds described in Subsection A of this Section are subject to the following conditions:

1. the funds shall be considered as federal part B funds for purposes of the calculations required by §203A.2 and A.3; and

2. the funds may be used without regard to the requirements of §203A1.

C. Meeting Other Part B Requirements. Except as provided in Subsection B of this Section, all other requirements of part B of the IDEA shall be met by an LEA using part B funds in accordance with Subsection A of this Section, including ensuring that students with disabilities in school-wide program schools:

1. receive services in accordance with a properly developed IEP; and

2. are afforded all the rights and services guaranteed to students with disabilities under the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§208. Personnel Development

A. The LEA shall ensure that all personnel necessary to carry out part B of the IDEA are appropriately and adequately prepared, subject to the requirements of §156 (related to personnel qualifications) and section 2122 of the ESEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§209. Permissive Use of Funds

A. Uses. Notwithstanding §§203, 204.A, and 162.B, funds provided to an LEA under part B of the IDEA may be used for the following activities:

1. services and aids that also benefit non-disabled student for the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a student with a disability in accordance with the IEP of the student, even if one or more non-disabled students benefit from these services;

2. early intervening services to develop and implement coordinated, early intervening educational services in accordance with §226;

3. high cost special education and related services to establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

B. Administrative Case Management. An LEA may use funds received under part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students with disabilities that is needed for the implementation of those case management activities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§210. Treatment of Charter Schools and their Students

A. Rights of Students with Disabilities. Students with disabilities who attend public charter schools and their parents retain all rights under these regulations.

B. Charter Schools that are public schools of the LEA

1. In carrying out part B of the IDEA, and these regulations, with respect to charter schools that are public schools of the LEA, the LEA shall:

a. serve students with disabilities attending those charter schools in the same manner as it serves students with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site of its other public schools; and

b. provide funds under part B of the IDEA to those charter schools:

i. on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of students with disabilities; and

ii. at the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the state's charter school law.

2. If the public Charter School is a school of an LEA that receives funding under §705 and includes other public schools:

a. the LEA shall be responsible for ensuring that the requirements of these regulations are met, unless state law assigns that responsibility to some other entity; and

b. the LEA shall meet the requirements of Paragraph B.1 of this Section.

C. Public charter schools that are LEAs. If the public charter school is an LEA, consistent with the definition of LEA in §905, that receives funding under §705, that charter school is responsible for ensuring that the requirements of these regulations are met, unless state law assigns that responsibility to some other entity.

D. Public charter schools that are not an LEA or a school that is part of an LEA

1. If the public charter school is not an LEA receiving funding under §705, or a school that is part of an LEA receiving funding under §705, including a type 5 charter school, the LDE is responsible for ensuring that the requirements of these regulations are met.

2. Paragraph D.1 of this Section does not preclude the state from assigning initial responsibility for ensuring the requirements of these regulations are met to another entity. However, the LDE shall maintain the ultimate responsibility for ensuring compliance with these regulations, consistent with §149.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§211. Purchase of Instructional Materials

A. General. Each LEA that chooses to coordinate with the National Instructional Materials Access Center (NIMAC), when purchasing print instructional materials, shall acquire those instructional materials in the same manner, and subject to the same conditions as the LDE in these regulations at §172, as found in *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual.*

B. Rights of LEA

1. Nothing in this Section shall be construed to require an LEA to coordinate with the NIMAC.

2. If an LEA chooses not to coordinate with the NIMAC, the LEA shall provide an assurance to the LDE that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

3. Nothing in this Section relieves an LEA of its responsibility to ensure that students with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities in 34 CFR 300.172(e)(1)(i) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner as described in *Bulletin 1794—The State Textbook Adoption Policies and Procedures Manual*.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§212. Information for SEA

A. The LEA shall provide the LDE with information necessary to enable the LDE to carry out its duties under part B of the IDEA including, with respect to §157 and §160, information relating to the performance of students with disabilities participating in programs carried out under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§213. Public Information

A. The LEA shall make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the agency under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§214. Records Regarding Migratory Students with Disabilities

A. The LEA shall cooperate in the secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§215-219. Reserved.

§220. Exception for Prior Local Plans

A. General. If the LEA or a state agency described in §300.228 has on file with the SEA policies and procedures that demonstrate that the LEA or state agency meets any requirement of §300.200, including any policies and procedures filed under part B of the IDEA as in effect before December 3, 2004, the SEA shall consider the LEA or state agency to have met that requirement for purposes of receiving assistance under part B of the IDEA.

B. Modification made by the LEA or State Agency. Subject to Subsection C of this Section, policies and procedures submitted by an LEA or a state agency in accordance with this subpart remain in effect until the LEA or state agency submits to the SEA the modifications that the LEA or state agency determines are necessary.

C. Modifications Required by the SEA. The SEA may require an LEA or a state agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or state agency's compliance with part B of the IDEA or state law, if:

1. after December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act (or the regulations developed to carry out the Act) are amended;

2. there is a new interpretation of an applicable provision of the Act by federal or state courts; or

3. there is an official finding of noncompliance with federal or state law or regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§221. Notification of LEA or State Agency in Case of Ineligibility

A. If the LDE determines that the LEA or state agency is not eligible under part B of the IDEA, then the LDE shall:

1. notify the LEA or state agency of that determination; and

2. provide the LEA or state agency with reasonable notice and an opportunity for a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§222. LEA and State Agency Compliance

A. General. If the LDE, after reasonable notice and an opportunity for a hearing, finds that the LEA or state agency that has been determined to be eligible under this Chapter is failing to comply with any requirement described in §§202 through 214, the LDE shall reduce or shall not provide any further payments to the LEA or State agency until the LDE is satisfied that the LEA or state agency is complying with that requirement.

B. Notice Requirement. Any state agency or LEA in receipt of a notice described in Subsection A of this Section shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

C. Consideration. In carrying out its responsibilities under this section, the LDE shall consider any decision resulting from a hearing held under §§511 through 533 that is adverse to the LEA or state agency involved in the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§223. Joint Establishment of Eligibility

A. General. The LDE may require the LEA to establish its eligibility jointly with another LEA if the LDE determines that the LEA will be ineligible under this Chapter because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of students with disabilities.

B. Charter School Exception. The LDE may not require a charter school that is an LEA to jointly establish its eligibility under Subsection A of this Section unless the charter school is explicitly permitted to do so under the state's charter school statute.

C. Amount of Payments. If the LDE requires the joint establishment of eligibility under Subsection A of this Section, the total amount of funds made available to the affected LEAs shall be equal to the sum of the payments that each LEA would have received under §705 if the agencies were eligible for those payments.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§224. Requirements for Establishing Eligibility

A. Requirements for LEAs in General. LEAs that establish joint eligibility under this Section shall:

1. adopt policies and procedures that are consistent with the state's policies and procedures under §§102 through 163 and §§165 through 174; and

2. be jointly responsible for implementing programs that receive assistance under part B of the IDEA.

B. Requirements for Educational Service Agencies in General. If an educational service agency is required by state law to carry out programs under part B of the IDEA, the joint responsibilities given to LEAs under part B of the IDEA:

1. do not apply to the administration and disbursement of any payments received by that educational service agency; and

2. shall be carried out only by that educational service agency.

C. Additional Requirement. Notwithstanding any other provision of §§223 through 224, an educational service agency shall provide for the education of students with disabilities in the least restrictive environment, as required by §113.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§225. Reserved.

§226. Early Intervening Services

A. General. An LEA may not use more than 15 percent of the amount the LEA receives under part B of the IDEA for any fiscal year, less any amount reduced by the LEA pursuant to §205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. (See Appendix D of 34 CFR 300.1 et seq. for examples of how §206.D, regarding local maintenance of effort, and §226.A affect one another.)

B. Activities. In implementing coordinated, early intervening services under this Section, an LEA may carry out activities that include:

1. professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including

scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

2. providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

C. Construction. Nothing in this Section shall be construed to either limit or create a right to FAPE under part B of the IDEA or to delay appropriate evaluation of a student suspected of having a disability.

D. Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section shall annually report to the LDE on:

1. the number of students served under this Section who received early intervening services; and

2. the number of students served under this section who received early intervening services and subsequently receive special education and related services under part B of the IDEA during the preceding two year period.

E. Coordination with ESEA. Funds made available to carry out this Section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§227. Direct Services by the LDE

A. General

1. The LDE shall use the payments that would otherwise have been available to an LEA or to a state agency to provide special education and related services directly to students with disabilities residing in the area served by that LEA, or for whom that state agency is responsible, if the LDE determines that the LEA or state agency:

a. has not provided the information needed to establish the eligibility of the LEA or state agency, or elected not to apply for its part B allotment, under part B of the IDEA;

b. is unable to establish and maintain programs of FAPE that meet the requirements of these regulations;

c. is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs; or

d. has one or more students with disabilities who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

2. LDE Administrative Procedures

a. In meeting the requirements in Paragraph A.1 of this Section, the LDE may provide special education and related services directly, by contract, or through other arrangements.

b. The excess cost requirements of §203.B do not apply to the LDE.

B. Manner and Location of Education and Services. The LDE may provide special education and related services under Subsection A of this Section in the manner and at the locations (including regional or state centers) as the LDE considers appropriate. The education and services shall be provided in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§228. State Agency Eligibility

A. Any state agency that desires to receive a subgrant for any fiscal year under §705 shall demonstrate to the satisfaction of the LDE that:

1. all students with disabilities who are participating in programs and projects funded under part B of the IDEA receive FAPE, and that those students and their parents are provided all the rights and procedural safeguards described in these regulations; and

2. the agency meets the other conditions of this chapter that apply to LEAs.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§229. Disciplinary Information

A. The LEA shall include in the records of a student with a disability, the state required forms listing suspensions or expulsions in the current or previous school year that have been taken against the student, and transmit the forms to the same extent that the disciplinary information is included in and transmitted with the student records of non-disabled students.

B. If the student transfers from one school to another, the transmission of any of the student's records shall include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Chapter 3. Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Subchapter A. Parental Consent

§301. Parental Consent

A. Parental Consent for Initial Evaluation

1.a. The public agency proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability as defined in §905 shall, after providing notice consistent with §§503 and 504, obtain informed consent consistent with the definition of consent in §905, from the parent of the student before conducting the evaluation.

b. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

c. The public agency shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability.

2. For initial evaluations only, if the student is a ward of the state and is not residing with the student's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with a disability if:

a. despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the student;

b. the rights of the parents of the student have been terminated in accordance with state law; or

c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

3.a. If the parent of a student enrolled in a public school or seeking to be enrolled in a public school does not provide consent for initial evaluation under Paragraph A of this Section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards in Chapter 5 of these regulations (including the mediation procedures under §506 or the due process procedures under §§507 through 516), if appropriate.

b. The public agency does not violate its obligation under §111 and §§302 through 308 if it declines to pursue the evaluation.

B. Parental Consent for Services

1. A public agency that is responsible for making FAPE available to a student with a disability shall obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

2. The public agency shall make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

3. If the parent of a student fails to respond or refuses to consent to services under Subsection B of this Section, the public agency may not use the procedures in Chapter 5 of these regulations (including the mediation procedures under §506 or the due process procedures under §§507 through 516) in order to obtain agreement or a ruling that the services may be provided to the student.

4. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency:

a. will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the special education and related services for which the public agency requests consent; and

b. is not required to convene an IEP Team meeting or develop an IEP under §§320 and 324 for the student for the special education and related services for which the public agency requests such consent.

C. Parental Consent for Reevaluations

1. Subject to Paragraph C.2 of this Section, each public agency:

a. shall obtain informed parental consent, in accordance with §301.A, prior to conducting any reevaluation of a student with a disability;

b. if the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in Paragraph A.4 of this Section;

c. the public agency does not violate its obligation under §111 and §§302 through 308 if it declines to pursue the evaluation or reevaluation;

2. The informed parental consent described in Paragraph C.1 of this Section need not be obtained if the public agency can demonstrate that:

a. it made reasonable efforts to obtain such consent; and

b. the student's parent has failed to respond.

D. Other Consent Requirements

1. Parental consent is not required before:

a. reviewing existing data as part of an evaluation or a reevaluation; or

b. administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

2. A public agency may not use a parent's refusal to consent to one service or activity under Paragraph A of this section to deny the parent or student any other service, benefit, or activity of the public agency, except as required by these regulations.

3.a. If a parent of a student who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in Paragraphs A.3 and C.1 of this Section); and

b. the public agency is not required to consider the student as eligible for services under §§132 through 144.

4. To meet the reasonable efforts requirement in Paragraphs A.1.c, A.2.a, B.2, and C.2.a of this Section, the public agency shall document its attempts to obtain parental consent using the procedures in §322D.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter B. Evaluations and Reevaluations

§302. Initial Evaluations

A. General. Each public agency shall conduct a full and individual initial evaluation, in accordance with §§306 and 307, before the initial provision of special education and related services to a student with a disability under these regulations.

B. Request for Initial Evaluation. Consistent with the consent requirements in §301, either a parent of a student or a public agency may initiate a request for an initial evaluation to determine if the student is a student with a disability.

C. Procedures for Initial Evaluation. The initial evaluation:

1.a. shall be conducted within 60 business days of receiving parental consent for the evaluation with additional appropriate extensions as established in *Bulletin 1508—The Pupil Appraisal Handbook;* and

2. shall consist of procedures:

a. to determine if the student is a student with a disability as defined in §905; and

b. to determine the educational needs of the student.

D. Exception. The timeframe described in Paragraph C.1 of this Section does not apply to a public agency if:

1. the parent of a student repeatedly fails or refuses to produce the student for the evaluation; or

2. a student enrolls in a school of another public agency after the relevant timeframe in Paragraph C.1 of this Section has begun, and prior to a determination by the student's previous public agency as to whether the student is a student with a disability as defined in §905.

E. The exception in Paragraph D.2 of this Section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§303. Screening for Instructional Purposes is not Evaluation

A. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§304. Reevaluations

A. General. A public agency shall ensure that a reevaluation of each student with a disability is conducted in accordance with §§305 through 308:

1. if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

2. if the student's parent or teacher requests a reevaluation.

B. Limitation. A reevaluation conducted under Subsection A of this Section:

1. may occur not more than once a year, unless the parent and the public agency agree otherwise; and

2. shall occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§305. Evaluation Procedures

A. Notice. The public agency shall provide notice to the parents of a student with a disability, in accordance with §504, that describes any evaluation procedures the agency proposes to conduct.

B. Conduct of Evaluation. In conducting the evaluation, the public agency shall:

1. use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

a. whether the student is a student with a disability as defined in §905; and

b. the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool student, to participate in appropriate activities);

2. not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student; and

3. use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

C. Other Evaluation Procedures. Each public agency shall ensure that:

1. assessments and other evaluation materials used to assess a student under these regulations:

a. are selected and administered so as not to be discriminatory on a racial or cultural basis;

b. are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

c. are used for the purposes for which the assessments or measures are valid and reliable;

d. are administered by trained and knowledgeable personnel; and

e. are administered in accordance with any instructions provided by the producer of the assessments;

2. assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

3. assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

4. the student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

5. assessments of students with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §302.D.2 and E, to ensure prompt completion of full evaluations;

6. in evaluating each student with a disability under §§305 through 307, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified;

7. assessment tools and strategies that provide relevant information that directly assists persons in

determining the educational needs of the student are provided.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§306. Additional Requirements for Evaluations and Reevaluations

A. Review of Existing Evaluation Data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under these regulations, the IEP Team and other qualified professionals, as appropriate, shall:

1. review existing evaluation data on the student, including:

a. evaluations and information provided by the parents of the student;

b. current classroom-based, local, or State assessments and classroom-based observations; and

c. observations by teachers and related services providers; and

2. on the basis of that review and on the input from the student's parents, identify what additional data, if any, are needed to determine:

a.i. whether the student is a student with a disability, as defined in §905, and the educational needs of the student;

ii. in the case of a reevaluation of a student, whether the student continues to have such a disability, and the educational needs of the student;

b. the present levels of academic achievement and related developmental needs of the student;

c.i. whether the student needs special education and related services; or

ii. in the case of a reevaluation of a student, whether the student continues to need special education and related services; and

d. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.

B. Conduct of Review. The group described in paragraph A of this section may conduct its review without a meeting.

C. Source of Data. The public agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified under Subsection A of this Section.

D. Requirements if Additional Data are not Needed

1. If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability, and to determine the student's educational needs, the public agency shall notify the parents of:

a. that determination and the reasons for the determination; and

b. the right of the parents to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.

2. The public agency is not required to conduct the assessment described in Subparagraph D.1.b of this Section unless requested to do so by the student's parents.

E. Evaluations before Change in Eligibility

1. Except as provided in Paragraph E.2 of this Section, a public agency shall evaluate a student with a disability in accordance with §§305 through 308 before determining that the student is no longer a student with a disability.

2. The evaluation described in Paragraph E.1 of this Section is not required before the termination of a student's eligibility under these regulations due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

3. For a student whose eligibility terminates under circumstances described in Paragraph E.2 of this Section, a public agency shall provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§307. Determination of Eligibility

A. General. Upon completion of the administration of assessments and other evaluation measures:

1. A group of qualified professionals and the parent of the student shall determine whether the student is a student with a disability, as defined in §905, in accordance with Subsection B of this Section and the educational needs of the student; and

2. The public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

B. Special Rule for Eligibility Determination. A student shall not be determined to be a student with a disability under these regulations:

1. if the determinant factor for that eligibility determination is:

a. lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

b. lack of appropriate instruction in math; or

c. limited English proficiency; and

2. if the student does not otherwise meet the eligibility criteria as a student with a disability as defined under §905.

C. Procedures for Determining Eligibility and Educational Need

1. In interpreting evaluation data for the purpose of determining if a student is a student with a disability as defined in §905, and the educational needs of the student, each public agency shall:

a. draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

b. ensures that information obtained from all of these sources is documented and carefully considered.

2. If a determination is made that a student has a disability and needs special education and related services, an IEP shall be developed for the student in accordance with §§320 through 324.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter C. Additional Procedures for Identifying Students with Specific Learning Disabilities

§308. Specific Learning Disabilities

A. General. Consistent with 34 CFR 300.309, the LDE adopts the criteria for determining whether a student has a specific learning disability in *Bulletin 1508—the Pupil Appraisal Handbook.* In addition, the criteria adopted by the LDE:

1. shall not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a student has a specific learning disability, as defined in §905;

2. shall permit the use of a process based on the student's response to scientific, research-based intervention; and

3. may permit the use of other alternative research-based procedures for determining whether a student has a specific learning disability, as defined in §905.

B. Consistency with State Criteria. A public agency shall use the LDE criteria adopted in Subsection A of this Section consistent with 34 CFR 300.308-311 and detailed in *Bulletin 1508—Pupil Appraisal Handbook* in determining whether a student has a specific learning disability.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§309-311. Reserved.

Subchapter D. Individualized Education Programs

§320. Definition of Individualized Education Program

A. General. As used in these regulations, the term *individualized education program or IEP*, a written statement for each student with a disability that is developed, reviewed, and revised in a meeting in accordance with §§320 through 324 and that shall include:

1. a statement of the student's present levels of academic achievement, and functional performance, including:

a. how the student's disability affects the student's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled students); or

b. for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities.

2.a. a statement of measurable annual goals, including academic and functional goals designed to:

i. meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

ii. meet each of the student's other educational needs that result from the student's disability;

b. for students with disabilities who take an alternate assessment, aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

3. a description of:

a. how the student's progress toward meeting the annual goals described in Paragraph A.2 of this Section will be measured; and

b. when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of the report cards) will be provided;

4. a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

a. to advance appropriately toward attaining the annual goals;

b. to be involved in and make progress in the general education curriculum in accordance with Paragraph A.1 of this Section, and to participate in extracurricular and other nonacademic activities; and

c. to be educated and participate with other students with disabilities and nondisabled students in the activities described in this section;

5. an explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and in the activities described in Paragraph A.4 of this Section;

6. a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments consistent with section 612(a)(16) of the IDEA; and

a. if the IEP Team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

i. the student cannot participate in the regular assessment; and

ii. the particular alternate assessment selected is appropriate for the student; and

7. the projected date for the beginning of the services and modifications described in Paragraph A.4 of this Section, and the anticipated frequency, location, and duration of those services and modifications.

B. Transition Services. Beginning not later than the first IEP to be in effect when the student with a disability turns 16 or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP shall include:

1. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

2. the transition services (including courses of study) needed to assist the student in teaching those goals.

C. Transfer of Rights at Age of Majority. Beginning not later than one year before a student reaches the age of majority under state law, the student's IEP shall include a statement that the student has been informed of the student's rights under part B of the IDEA, if any, that will transfer to the student on reaching the age of majority, under §520.

D. Construction. Nothing in this section shall be construed to require:

1. that additional information be included in a student's IEP beyond what is explicitly required in section 614 of the IDEA; or

2. the IEP Team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§321. IEP Team

A. The public agency shall ensure that the IEP Team for each student with a disability includes:

1. one or both of the parents of the student;

2. not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);

3. not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

4. an officially designated representative of the public agency who:

a. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

b. is knowledgeable about the general education curriculum; and

c. is knowledgeable about the availability of resources of the public agency.

5. an individual who can interpret the instructional implications of evaluation results, who may be a member of the team as described in Paragraphs A.2 through A.6 of this Section;

6. at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related service personnel as appropriate; and

7. whenever appropriate, the student with a disability.

B. Transition Services Participants

1. In accordance with Paragraph A.7 of this Section, the public agency shall invite a student with a disability to attend the student's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals under §320.B.

2. If the student does not attend the IEP Team meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

3. To the extent appropriate, with the consent of the parents or the student who has reached the age of majority, in implementing the requirements of Paragraph B.1 of this Section, the public agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

C. Determination of Knowledge and Special Expertise. The determination of the knowledge or special expertise of any individual described in Paragraph A.6 of this Section shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

D. Designating a Public Agency Representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in Paragraph A.4 of this Section are satisfied.

E. IEP Team Attendance

1. A member of the IEP Team described in Paragraphs A.2 through A.5 of this Section is not required to attend an IEP meeting, in whole or in part, if the parent of the student with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A member of the IEP Team described in Paragraph E.1 of this Section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

a. the parent, in writing, and the public agency consent to the excusal; and

b. the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

F. Initial IEP Team Meeting for Child under part C. In the case of a child who was previously served under part C of the IDEA, an invitation to the initial IEP Team meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§322. Parent Participation

A. Public Agency Responsibility—General. Each public agency shall take steps to ensure that one or both of the parents of the student with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

1. notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

2. scheduling the meeting at a mutually agreed upon time and place.

B. Information Provided to Parents

1. The notice required under Paragraph A.1 of this Section shall:

a. indicate the purpose, time, and location of the meeting and who will be in attendance; and

b. inform the parents of the provisions in §321.A.6 and C (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the student), and §321F (relating to the participation of the part C service coordinator or other representatives of the part C system at the initial IEP Team meeting for a student previously served under part C of the IDEA).

2. For a student with a disability beginning not later than the first IEP to be in effect when the student turns 16, or younger if determined to be appropriate by the IEP Team, the notice also shall:

a. indicate:

i. that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student, in accordance with §320B; and

ii. that the agency will invite the student; and

b. identify any other agency that will be invited to send a representative.

C. Other Methods to Ensure Parent Participation. If neither parent can attend an IEP Team meeting, the public agency shall use other methods to ensure parent participation, including individual or conference telephone

calls, consistent with §328 (related to alternative means of meeting participation).

D. Conducting an IEP Team Meeting without a Parent in Attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency shall keep a record of its attempts to arrange a mutually agreed upon time and place, such as:

1. detailed records of telephone calls made or attempted and the results of those calls;

2. copies of correspondence sent to the parents and any responses received; and

3. detailed records of visits made to the parent's home or place of employment and the results of those visits.

E. Use of Interpreters or Other Action, as Appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

F. Parent Copy of Student's IEP. The public agency shall give the parent a copy of the student's IEP at no cost to the parent.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§323. When IEPs shall be in Effect

A. General. At the beginning of each school year, each public agency shall have in effect, for each student with a disability within its jurisdiction, an IEP, as defined in §320.

B. IEPs for Students Aged 3 through 5

1. In the case of student with a disability aged 3 through 5, the IEP Team shall consider an individualized family service plan (IFSP), if the student was served under part C of the IDEA.

C. Initial IEPs; Provision of Services. Each public agency shall ensure that:

1. a meeting to develop an IEP for a student is conducted within 30 days of a determination that the student needs special education and related services; and

2. as soon as possible but no later than 10 school days following the development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

D. Accessibility of Student's IEP to Teachers and Others. Each public agency shall ensure that:

1. the student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

2. Each teacher and service provider described in Paragraph D.1 of this Sction shall be informed of:

a. his or her specific responsibilities related to implementing the student's IEP; and

b. the specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.

E. IEPs for Students who Transfer Public Agencies in the Same State. If a student with a disability (who had an IEP that was in effect in a previous public agency within Louisiana) transfers to a new public agency within Louisiana, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide FAPE to the student (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency either:

1. adopts the student's IEP from the previous public agency; or

2. develops, adopts, and implements a new IEP that meets the applicable requirements in §§320 through 324.

F. IEPs for Students who Transfer from another State. If a student with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in Louisiana, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) shall provide the student with FAPE (including services comparable to those described in the student's IEP from the previous public agency), until the new public agency:

1. conducts an evaluation pursuant to §§305 through 307 (if determined to be necessary by the new public agency); and

2. develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§320 through 324.

G. Transmittal of Records. To facilitate the transition for a student described in Subsections E and F of this Section:

1. the new public agency in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled, pursuant to 34 CFR 99.31(a)(2); and

2. the previous public agency in which the student was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

AUTHORITY NOTE: romulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: romulgated by the Board of Elementary and Secondary Education, LR 34:

Subchapter E. Development of IEP

§324. Development, Review, and Revision of IEP

A. Development of IEP

1. General. In developing each student's IEP, the IEP Team shall consider:

a. the student's strengths;

b. the concerns of the parents for enhancing the education of their child;

c. the results of the initial evaluation or most recent evaluation of the student; and

d. the academic, developmental, and functional needs of the student.

2. Consideration of Special Factors. The IEP Team shall:

a. in the case of a student whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

b. in the case of a student with limited English proficiency, consider the language needs of the student as those needs relate to the student's IEP;

c. in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of

Braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille) that instruction in Braille or the use of Braille is not appropriate for the student;

d. consider the communication needs of the student, and in the case of a student who is deaf or hard-of-hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and

e. consider whether the student requires assistive technology devices and services based on assessment/evaluation results; and

f. consider health needs of students with disabilities to be met during the school day based on a health assessment.

3. Requirement with Respect to Regular Education Teacher. A regular education teacher of a student with a disability, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the student, including the determination of:

a. appropriate positive behavioral interventions and supports and other strategies for the student; and

b. supplementary aids and services, program modifications, and support for school personnel consistent with §320.A.4.

4. Agreement

a. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP.

b. If changes are made to the student's IEP in accordance with paragraph A4a of this section, the public agency shall ensure that the student's IEP Team is informed of those changes.

5. Consolidation of IEP Team Meetings. To the extent possible, the public agency shall encourage the consolidation of reevaluation meetings for the student and other IEP Team meetings for the student.

6. Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in Paragraph A.4 of this Section, by amending the IEP rather than by redrafting the entire IEP. A parent shall be provided with a revised copy of the IEP with the amendments incorporated.

B. Review and Revision of IEPs.

1. Each public agency shall ensure that, subject to Paragraphs B.2 and B.3 of this Section, the IEP Team:

a. reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

b. revises the IEP, as appropriate, to address:

i. any lack of expected progress toward the annual goals described in §320A2, and in the general education curriculum, if appropriate;

ii. the results of any reevaluation conducted under §304;

iii. information about the student provided to, or by, the parents, as described under §306A2;

iv. the student's anticipated needs; or

v. other matters.

2. Consideration of Special Factors. In conducting a review of the student's IEP, the IEP Team shall consider the special factors described in Paragraph A.2 of this Section.

3. Requirement with Respect to Regular Education Teacher. A regular education teacher of the student, as a member of the IEP Team, shall, consistent with Paragraph A.3 of this Section, participate in the review and revision of the IEP of the student.

C. Failure to Meet Transition Objectives

1. Participating Agency Failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §320.B, the public agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Construction. Nothing in these regulations relieves any participating agency, including Louisiana Rehabilitation Services, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

D. Students with Disabilities in Adult Prison

1. Requirements That Do Not Apply. The following requirements do not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

a. the requirements contained in section 612(a)(16) of the IDEA and §320.A.6 (relating to participation of students with disabilities in general assessments).

b. the requirements in §320.B (relating to transition planning and transition services) do not apply with respect to the students whose eligibility under part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

2. Modifications of IEP or Placement

a. Subject to Subparagraph D.2.b of this Section, the IEP Team of a student with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

b. The requirements of §320 (relating to IEPs), and §114 (relating to LRE), do not apply with respect to the modifications described in Subparagraph D.2.a of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§325. Private School Placements by Public Agencies

A. Developing IEPs

1. Before a public agency places a student with a disability in, or refers a student to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the student in accordance with §§320 and 324.

2. The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

B. Reviewing and Revising IEPs

1. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

2. If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative:

a. are involved in any decision about the student's IEP; and

b. agree to any proposed changes in the IEP before those changes are implemented.

C. Responsibility. Even if a private school or facility implements a student's IEP, responsibility for compliance with these regulations remains with the public agency and the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§326. Reserved.

§327. Educational Placements

A. Consistent with §502.C, each public agency shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their child.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§328. Alternative Means of Meeting Participation

A. When conducting IEP Team meetings and placement meetings pursuant to Chapters 3 and 5 of these regulations, and carrying out administrative matters under section 615 of the IDEA (such as scheduling, exchange of witness lists, and status conferences), the parent of a student with a disability and a public agency may agree to use alternative means of meeting participation, such as videoconferences and conference calls.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Chapter 4. Special School District (SSD) and BESE Special Schools (BSS)

Subchapter A. Special School District

§401. Special School District (SSD)

A. BESE is the governing authority of the Special School District (SSD). The state superintendent shall administer SSD, an educational service agency within the department, pursuant to R.S. 17:1951.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§402. Provision of Services

A. Special education services provided by SSD to students with disabilities shall be provided in compliance with these regulations. Provision of services to other students (gifted or talented or regular education) is not governed by these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§403. Facility

A. For the purpose of this Chapter, *facility* shall refer to the agency or site that houses an SSD program. Facility does not include SSD, which does not operate any facilities but provides educational services to residents or clients at facilities operated by other agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§404. Purpose and Jurisdiction

A. SSD shall be responsible for providing special education and related services to any student with disabilities who is enrolled in any state-operated facility as a resident of the facility and for providing appropriate educational services to any eligible student enrolled in any state-operated mental health facility as a resident of the facility, when the facility releases the student to SSD for educational purposes.

B. Individuals with disabilities over age 21 but not over age 24 shall be provided continued special education services when data indicate that the individual with a disability is able to continue to benefit from a program of instruction specifically designed to provide for different learning styles of individuals with disabilities.

C. SSD may enter into interagency agreements with other state agencies to provide appropriate educational services, including special education and related services, to any eligible student who is not a resident of a state-operated facility but who is in the care or custody of a public or private department, agency, or institution.

D. SSD may enter into interagency agreements with other State agencies to provide appropriate educational services to any eligible individual regardless of age who is enrolled in any State-operated facility as a resident of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§405. Transition/Day Programs

A. SSD may enter into interagency agreements with other State agencies which operate transition programs or day programs to provide appropriate educational services to students. This includes private providers of alternative educational services, as described in R.S. 17:100.1, in both residential and transition/day programs.

1. Transition/day programs shall contain the following elements:

a. all transition/day programs shall be established by the facility in a detailed, written plan approved by the state director;

b. students in a transition/day program who attend school in their regular LEA may not be placed in the SSD educational program for brief periods of time such as holidays and other periods during which the student's regular LEA is closed; exceptions may be made for unique

circumstances on a case-by-case basis with prior written consent of the SSD state director;

c. the facility shall provide the necessary supports, including crisis management and health-related services, to SSD students who are in the transition/day program; and

d. only students who are also receiving other services from the facility may enroll in an SSD program at the facility; educational services may not be the only service the student receives in the transition/day program.

B. The provision of educational services to students in a transition or day program is subject to adequate SSD funding availability. If funds are unavailable to SSD, the student's LEA of current residence assumes jurisdiction for the student and is responsible for providing FAPE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§406. Emergency and Respite Care Program

A. The admission of a student by the state of Louisiana into a State-operated facility for a temporary program of respite care shall not automatically require enrollment in SSD for the purpose of these regulations. The admission of a student on an emergency basis shall not constitute enrollment in SSD; however, if such admission continues after a decision has been made by the legally constituted agency or by a court of the state of Louisiana to place the student in a state-operated residential facility on a non-emergency basis, the student shall be enrolled in SSD in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§407. Reserved.

§408. Financing

A. SSD shall retain full financial responsibility for all education programs administered by SSD.

B. The entity housing an SSD program is responsible for providing all transportation services, including those contained in a student's IEP, and daily living supplies such as basic cleaning supplies; personal hygiene supplies; meals and meal supplies, including but not limited to utensils, cups, and plates; and medical and health related supplies.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§409. Reserved.

§410. Students with Disabilities in Adult Prisons

A. The following requirements shall not apply to students with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. the requirements relating to participation of students with disabilities in general assessments; and

2. the requirements relating to transition planning and transition services, with respect to students whose eligibility will end, because of their age, before they will be released from prison.

B. If a student with a disability is convicted as an adult under State law and incarcerated in an adult prison, the student's IEP Team may modify the student's IEP or placement notwithstanding the requirements for least restrictive environment if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§411.-449. Reserved.

Subchapter B. BESE Special Schools

§450. BESE Special Schools (BSS)

A. BESE is the governing authority of the BESE Special Schools (BSS). The State Superintendent shall supervise and oversee the administration of the BESE Special Schools. The BESE Special Schools are Louisiana School for the Deaf (LSD), Louisiana School for the Visually Impaired (LSVI), and Louisiana Special Education Center (LSEC). These are State-operated schools providing educational programs and services for residential and/or day students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§451.-452. Reserved.

§460. Purpose and Jurisdiction

A. BESE special schools are designated to provide FAPE for students who have been evaluated and classified as having low-incidence impairments, including but not limited to hearing impairments, visual impairments, or orthopedic impairments, that meet the criteria for admission for each such special school.

B.1. Each BSS, in recognition of its uniqueness and expertise in serving students with low incidence impairments, is designated as a specialized state-wide resource center and may assist LEAs in the provision of services as requested by LEAs.

2. Services may include, but are not limited to: student assessment; in-service training; curricular materials sharing; consultation; and program design, development, and evaluation.

C. Notwithstanding any other provision of these regulations, when a student with a disability is admitted to a BSS and receives the majority of educational services from the BSS, the student shall be under the jurisdiction of the BSS, even if the student receives some services from an LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§461. Provision of Services

A. Special education services provided by BSS to students with disabilities shall be provided in compliance with these regulations. Provision of services to other (gifted, talented or regular education) students is not governed by these regulations.

AUHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§462. LEA Request for Enrollment in a BSS

A. When an LEA requests that a student be enrolled in a BSS, the requesting LEA is to provide the BSS with

documentation of the need for educating the student in the BSS, and

B. Prior to and during the admission consideration, the requesting LEA will be responsible for providing:

1. documentation reflecting the student's educational/behavioral functioning in the LEA setting including the student's mode of communication to assist in determining a BSS's ability to provide an appropriate program. This includes, but is not limited to student's records, the most recent evaluation, most recent IEP, all records and reports regarding grades and high stakes testing, behavior incidents, audiometric data, vision data, educational progress, immunizations, special health concerns and relevant information from private providers; and

2. An LEA representative at the IEP conference, as appropriate.

C. If a student is not admitted to a BSS, the requesting LEA is responsible for providing services or causing services to be provided to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1960

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§463. Parent Request for Enrollment to LSD or LSVI

A. If an LEA does not request enrollment to a BSS, a parent may request admittance to LSD or LSVI. This request is referred to as parent option.

B. Prior to September 1 of each school year, LSD and LSVI shall determine starting enrollment/resource figures for:

1. the number of students enrolled to date through the referral process and previous parent option students who continue to meet enrollment standards;

2. the resources available to provide supplementary services beyond classroom instruction for those students (e.g. bus space availability; professional service contract limits for OT and PT, psychiatric and psychological services; residential staff/student ratio).

C. If the student is not admitted to LSD or LSVI, jurisdiction does not change.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1946 and R.S. 17:1960.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§464. Admission and Release

A. Eligible students with disabilities, including those who can be served through regular education facilities, shall be admitted to and released from BESE Special Schools, according to procedures approved by BESE, which include the components listed below.

B.1. Each BSS shall develop and maintain operational procedures concerning the admission of students which incorporate the following:

a. each BSS shall make an annual determination of the number of additional students by grade, bus space availability, professional service contract limits for OT and PT, psychiatric and psychological services, and residential staff/student who may be admitted;

b. students shall be between 3 and 21 years of age, inclusive;

c. as permitted by statute, appropriate services, which need not comply with these regulations, may be provided at extended ages;

d. students must be residents of Louisiana;

e. students must possess a current evaluation with a disability classification that is germane to the services of the school; and

f. students who are not otherwise eligible for admission to a BSS may be admitted for educational purposes, including providing interaction with non-disabled peers and educating students who, based on a medical diagnosis, will likely be eligible for admission in the future.

2. Each BSS shall develop and maintain operational procedures concerning the release of students which incorporate the following circumstances:

a. when a student has received a regular high school diploma;

b. when a student has reached his/her 22nd birthday by the completion of the current school session or an age extension is granted by law; unless:

i. the admissions and release committee of the BSS determines that the needs of the student are appropriate to continued educational services, in accordance with eligibility requirements stated above for educational services; and

ii. the board special school director authorizes an additional period of service to the student which includes cooperative inter-agency or postgraduate services;

iii. services provided to students over the age of 22 need not be in accordance with these regulations;

c. when the student's IEP Team determines that the BSS is not appropriate for the student;

d. when parental approval for placement is withdrawn;

e. when a student is removed in accordance with applicable law.

3. A student who cannot conform to a residential setting may be denied admission or continued enrollment as a residential student and be released from a BSS. An LEA or parent may seek admission for the student to be enrolled as a day student.

4. The BSS shall notify the appropriate LEA when a student who is still eligible for a free appropriate public education is released from BSS.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§465. Reserved.

§466. Transportation

A. Home visit transportation for residential students will be provided within the school calendar, which is updated and approved in accordance with BESE procedures. Additional home visit transportation costs will be borne by the parent unless otherwise provided in the IEP or school policy.

B. Each BSS may establish a policy to provide for transportation or to reimburse parents for transportation, at the option of the BSS, when the BSS requires that the student be sent home.

C. Daily transportation for commuter/day students will be the responsibility of the requesting LEA, unless the student was admitted via Parent Option. Nothing in these regulations would prohibit LEAs from providing transportation for a Parent Option student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq. including R.S. 17:1946 and R.S. 17:1960.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§467-499. Reserved.

Chapter 5. Procedural Safeguards

Subchapter A. Due Process Procedures for Parents and Students

§501. Responsibility of State and Other Public Agencies

A. The LDE shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§501 through 536.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§502. Opportunity to Examine Records and Parent Participation in Meetings

A. Opportunity to Examine Records. The parents of a student with a disability shall be afforded, in accordance with procedures of §§613 through 621, an opportunity to inspect and review all education records with respect to:

1. the identification, evaluation, and educational placement of the student; and

2. the provision of a free appropriate public education to the student.

B. Parent Participation in Meetings

1. The parents of a student with a disability shall be afforded an opportunity to participate in meetings with respect to:

a. the identification, evaluation, and educational placement of the student; and

b. the provision of a free appropriate public education to the student.

2. Each public agency shall provide notice consistent with §322.A.1 and B.1 to ensure that parents of a student with a disability have the opportunity to participate in meetings described in Paragraph B.1of this Section.

3. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities in which public agency personnel engage to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

C. Parent Involvement in Placement Decisions

1. Each public agency shall ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

2. In implementing the requirements of Paragraph C.1 of this Section, the public agency shall use procedures consistent with the procedures described in §322.A through B.1.

3. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of his or her child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

4. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency shall have a record of its attempt to ensure parental involvement.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§503. Independent Educational Evaluation (IEE)

A. General

1. The parents of a student with a disability have the right under these regulations to obtain an independent educational evaluation of the student, subject to Subsections B through E of this Section.

2. Each public agency shall provide to the parent, upon request for an IEE, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth in Subsection E of this section.

3. For the purposes of this Chapter:

a. *Independent Educational Evaluation (IEE)*—an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question; and

b. *Public Expense*—that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §103.

B. Parent Right to Evaluation at Public Expense

1. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in Paragraphs B.2 through 4 of this Section.

2. If a parent requests an independent educational evaluation at public expense, the public agency shall, without unnecessary delay, either:

a. file a request for due process hearing to show that its evaluation is appropriate; or

b. ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§507 through 513 that the evaluation obtained by the parent did not meet agency criteria.

3. If the public agency files a request for due process hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

4. If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a request for due process hearing to defend the public evaluation.

5. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

C. Parent-Initiated Evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation:

1. shall be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

2. may be presented by any party as evidence at a hearing on a due process request regarding that student under Chapter 5 of these regulations.

D. Requests for Evaluations by Hearing Officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a request for due process hearing, the cost of the evaluation shall be at public expense.

E. Agency Criteria

1. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

2. Except for the criteria described in Paragraph E.1 of this Section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§504. Prior Notice by the Public Agency; Content of Notice

A. Notice. Written notice that meets the requirements of Subsection B of this Section shall be given to the parents of a student with a disability a reasonable time before the public agency:

1. proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or

2. refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. Content of Notice. The notice under Subsection A of this Section shall include:

1. a description of the action proposed or refused by the agency;

2. an explanation of why the agency proposes or refuses to take the action;

3. a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

4. a statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for an evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

5. sources for parents to contact to obtain assistance in understanding the provisions of this chapter;

6. a description of other options that the IEP Team considered and the reasons why those options were rejected; and

7. a description of other factors that are relevant to the agency's proposal or refusal.

C. Notice in Understandable Language

1. The notice required under paragraph A of this section shall be:

a. written in language understandable to the general public; and

b. provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

2. If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:

a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

b. the parent understands the content of the notice; and

c. there is written evidence that the requirements of Subparagraph C.2.a and b of this Section have been met.

D. If the notice relates to an action proposed by the agency that also requires parental consent under §301, the LEA may give notice at the same time it requests parental consent.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

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

§505. Procedural Safeguards Notice

A. General. A copy of the procedural safeguards entitled *Louisiana's Educational Rights of Children with Disabilities* shall be given to the parents of a student with a disability only one time a school year, except that a copy also shall be given to the parents:

1. upon initial referral or parent request for evaluation;

2. upon receipt of the first state complaint under §§151 through 153 and upon receipt of the first request for due process hearing under §507 in a school year;

3. in accordance with the discipline procedures in §530.H; and

4. upon request by a parent.

B. Internet Website. A public agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists.

C. Contents. The procedural safeguards notice shall include a full explanation of all procedural safeguards available under §148, §§151 through 153, §301, §§503 through 518, §520, §§530 through 536 and §§611 through 625 relating to:

1. independent educational evaluations;

2. prior written notice;

3. parental consent;

4. access to education records;

5. opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:

a. the time period in which to file a complaint;

b. the opportunity for the agency to resolve the complaint; and

c. the difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

6. the availability of mediation;

7. the student's placement during the pendency of any due process complaint;

8. procedures for students who are subject to placement in an interim alternative educational setting;

9. requirements for unilateral placement by parents of students in private schools at public expense;

10. hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;

11. civil actions, including the time period in which to file those actions; and

12. attorneys' fees.

D. Notice in Understandable Language. The notice required under paragraph A of this section shall meet the requirements of §504.C.

E. Electronic Mail. A parent of a student with a disability may elect to receive notices required by §§504, 505, and 508 by an electronic mail communication, if the public agency makes that option available.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§506. Mediation

A. General. Mediation shall be available to allow parties to disputes involving any matter under these regulations, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

B. Procedures. The LDE adopts the following procedures to ensure:

1. that the mediation process:

a. is voluntary on the part of both parties;

b. is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under part B of the IDEA; and

c. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques;

2. a public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

a. who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under §671 or §672 of the IDEA; and

b. who would explain the benefits of, and encourage the use of, the mediation process to the parents;

3.a. the LDE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;

b. the LDE shall assign mediators on a rotational basis;

4. the LDE shall bear the cost of the mediation process, including the costs of meetings described in Paragraph B.2 of this Section;

5. each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute;

6. if the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and that:

a. states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

b. is signed by both the parent and a representative of the agency who has the authority to bind such agency;

7. a written, signed mediation agreement under this Paragraph shall be enforceable in any State court of competent jurisdiction or in a district court of the United States;

8. discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court.

C. Impartiality of Mediator

1. An individual who serves as a mediator under these regulations:

a. may not be an employee of the LDE or the LEA that is involved in the education or care of the student; and

b. shall not have a personal or professional interest that conflicts with the person's objectivity.

2. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under §228 solely because he or she is paid by the agency to serve as a mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§507. Filing a Request for Impartial Due Process Hearing

A. General

1. A parent or public agency may file a Request for Due Process Hearing on any of the matters described in §504.A.1 and 2 (relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the student).

2. Prescription. The due process hearing request shall allege a violation that occurred not more than one year before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the request for due process hearing, except that the exceptions to the timeline described in §511.G apply to the timeline in this section.

B. Information for Parents. The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

1. the parent requests the information; or

2. the parent or the agency files a request for due process hearing under this section.

3. A parent who is not literate in English or has a disability that limits his or her ability to communicate in writing shall be afforded the opportunity for assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§508. Due Process Hearing Request

A. General

1. A party, or the attorney representing a party, files a request for due process hearing by sending to the other party a written request for due process hearing (which shall remain confidential).

2. The party filing a request for due process hearing shall forward a copy to the LDE.

B. Content of Request for Due Process Hearing. The written request for due process hearing required in Paragraph A.1 of this Section shall include:

1. the student's name;
2. the address of the residence of the student;
3. the name of the school the student is attending;
4. in the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending;
5. a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. a proposed resolution of the problem to the extent known and available to the person requesting the hearing at the time.

C. Notice Required before a Hearing on a Request for Due Process Hearing. A party may not have a hearing on a request for due process hearing until the party, or the attorney representing the party, files a request for due process hearing that meets the requirements of Subsection B of this Section.

D. Sufficiency of Request for Due Process Hearing

1. The request for due process hearing required by this section shall be deemed sufficient unless the party receiving the request for due process hearing notifies the hearing officer and the other party in writing, within 15 days of receipt of the written request for due process hearing, that the receiving party believes the written request does not meet the requirements in Subsection B of this Section.
2. Within five days of receipt of notification under Paragraph D.1of this Section, the hearing officer shall make a determination on the face of the written request for due process hearing, whether the due process hearing request meets the requirements of Subsection B of this Section, and shall immediately notify the parties in writing of that determination.

E. Amendments to Written Request

1. A party may amend its request for due process hearing only if:
   a. the other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a meeting held pursuant to §510.A; or
   b. the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than 5 days before the due process hearing begins.
2. If a party files an amended request for a due process hearing, the timelines for the resolution meeting in §510.A and the time period to resolve in §510.B begin again with the filing of the amended due process hearing request.

F. LEA's Response to Request for Due Process Hearing

1. If the LEA has not sent a prior written notice under §504 to the parent regarding the subject matter contained in the parent's request for due process hearing, the LEA shall, within 10 days of receiving the request for due process hearing, send to the parent a response that includes:
   a. an explanation of why the agency proposed or refused to take the action raised in the request for due process hearing;
   b. a description of other options that the IEP Team considered and the reasons why those options were rejected;
   c. a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
   d. a description of the other factors that are relevant to the agency's proposed or refused action.
2. A response by an LEA under paragraph F1 of this section shall not be construed to preclude the LEA from asserting that the parent's request for due process hearing was insufficient, where appropriate.

G. Other Party Response to a Request for Due Process Hearing. Except as provided in Subsection F of this Section, the party receiving a written request for due process hearing shall, within 10 days of receiving the written request, send to the other party a response that specifically addresses the issues raised in the request for due process hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§509. Model Forms

A. The LDE has developed model forms to assist parents and public agencies in filing a request for due process hearing in accordance with §§507.A and 508.A through C and to assist parents and other parties in filing a state complaint under §151 through 153. The forms may be found in the *Louisiana's Educational Rights of Children with Disabilities* and on the LDE website. The use of the model forms shall not be required.

B. Parents, public agencies, and other parties may use the appropriate model forms described in paragraph A of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §508.B for filing a request for due process hearing, or the requirements in §152.B for filing a state complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§510. Resolution Process

A. Resolution Meeting

1. Within 15 days of receiving notice of the parent's request for due process hearing, and prior to the initiation of a due process hearing under §511, the LEA shall convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the request for due process hearing that:
   a. includes a representative of the public agency who has decision-making authority on behalf of that agency; and
   b. may not include an attorney of the LEA unless the parent is accompanied by an attorney.
2. The purpose of the meeting is for the parent of the student to discuss his or her request for due process hearing, and the facts that form the basis of the request for due process hearing, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process hearing request.
3. The meeting described in Paragraph A.1 and 2 of this section need not be held if:

a. the parent and the LEA agree in writing to waive the meeting; or

b. the parent and the LEA agree to use the mediation process described in §506.

4. The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

B. Resolution Period

1. If the LEA has not resolved the issues contained in the request for due process hearing to the satisfaction of the parents within 30 days of the receipt of the written request for due process hearing, the due process hearing may occur.

2. Except as provided in Subsection C, the timeline for issuing a final decision under §515 begins at the expiration of this 30-day period.

3. Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding Paragraphs B.1 and 2 of this Section, the failure of a parent filing a due process request to participate in the resolution meeting shall delay the timelines for the resolution process and due process hearing until the meeting is held.

4. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §322D), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's request for due process hearing.

5. If the LEA fails to hold the resolution meeting specified in Subsection A of this Section within 15 days of receiving notice of a parent's request for due process hearing or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

C. Adjustments to 30-Day Resolution Period. The 45-day timeline for the due process hearing in §515.A starts the day after one of the following events:

1. both parties agree in writing to waive the resolution meeting;

2. after either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible;

3. if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

D. Written Settlement Agreement. If a resolution to the dispute is reached at the meeting described in Paragraphs A.1 and 2 of this Section, the parties shall execute a legally binding agreement that is:

1. signed by both the parent and a representative of the agency who has the authority to bind the agency; and

2. enforceable in any state court of competent jurisdiction or in a district court of the United States, or, by the LDE, through the state complaint procedures pursuant to §537.

E. Agreement Review Period. If the parties execute an agreement pursuant to Subsection C of this Section, a party may void the agreement within three business days of the agreement's execution.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§511. Impartial Due Process Hearing and Hearing Officer Appointments

A. General. Whenever a request for due process hearing is received under §507 or §532.C, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing, consistent with the procedures in §§507, 508, and 510.

B. Agency Responsible for Conducting the Due Process Hearing. The due process hearing described in paragraph A of this section shall be conducted by the LDE.

C. Impartial Hearing Officer. The LDE shall appoint hearing officers, who:

1. meet the minimum qualifications stipulated below:

a. shall have earned a *juris doctorate* degree;

b. shall possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts;

c. shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;

d. shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; and

e. shall possess other qualifications established by the LDE.

2. shall not:

a. be an employee of a public agency that is involved in the education or care of the student;

b. have a personal or professional interest that would conflict with the person's objectivity in the hearing; or

c. have represented an LEA or a parent as an attorney in education litigation within a three year period prior to appointment by the LDE.

3. A person who otherwise qualifies to conduct a hearing under Paragraph C.1 of this Section is not an employee of the agency solely because the person is paid by the agency to serve as a hearing officer.

4. The LDE and each LEA shall keep the LDE-generated list of qualified hearing officers. The list shall include a statement of the qualifications of each of the hearing officers.

5. The LDE shall ensure that impartial due process hearing officers appointed pursuant to this section have successfully completed a training program approved by the LDE. Additional training shall be provided by the LDE whenever warranted by changes in applicable legal standards or educational practices or as determined necessary by the LDE.

6. Appointments are renewed at the discretion of the LDE.

7. The LDE shall assign the hearing officer on a rotational basis from the LDE's list of qualified hearing officers.

D. Challenge to Impartiality of Due Process Hearing

1. The parent or LEA shall submit written information to the LDE within three business days of receipt of the notice of the assigned hearing officer, in order to challenge the impartiality of the hearing office.

2. The LDE shall review any written challenge to the impartiality of the hearing officer and provide a written

decision and notice to the parent and LEA within three business days after receipt of the written challenge.

3. If the LDE determines that doubt exists as to whether the proposed hearing officer is truly impartial, another hearing officer shall be immediately assigned.

E. Subject Matter of Due Process Hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the request for due process hearing filed under §508.B, unless the other party agrees otherwise.

F. Timeline for Requesting a Hearing. A parent or agency shall request an impartial hearing on their request for due process hearing within one year of the date the parent or agency knew or should have known about the alleged action that forms the basis of the request for due process hearing.

G. Exceptions to the Timeline. The timeline described in Subsection F of this Section does not apply to a parent if the parent was prevented from filing a request for due process hearing due to:

1. specific misrepresentations by the LEA that it had resolved the problem forming the basis of the request for due process hearing; or

2. the LEA's withholding of information from the parent that was required under these regulations to be provided to the parent.

H. Procedures for conducting a hearing are stipulated below:

1. the hearing officer shall contact all parties to schedule the hearing and then shall notify in writing all parties and the LDE of the date, time and place of the hearing.

2. the hearing shall be conducted in accordance with these regulations as well as procedural guidelines developed by the LDE.

3. at the request of either party, the hearing officer shall have the authority to subpoena persons to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§512. Hearing Rights

A. General. Any party to a hearing conducted pursuant to §§507 through 513 or §§530 through 534 has the right to:

1. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;

2. present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

4. obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing at no cost; and

5. obtain written, or, at the option of the parents, electronic findings of fact and decisions at no cost.

B. Additional Disclosure of Information

1. At least 5 business days prior to a hearing conducted pursuant to §511.A, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

2. A hearing officer may bar any party that fails to comply with Paragraph B.1 of this Section from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

C. Parental Rights at Hearings. Parents involved in a hearing shall be given the right to:

1. have the student who is the subject of the hearing present;

2. have the hearing open to the public; and

3. have the record of the hearing and the findings of fact and decisions described in Paragraphs A.4 and A.5 of this Section provided at no cost to parents.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§513. Hearing Decisions

A. Decision of Hearing Officer on the Provision of FAPE

1. Subject to Paragraph A.2 of this Section, a hearing officer's determination of whether the student received FAPE shall be based on substantive grounds.

2. In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:

a. impeded the student's right to FAPE;

b. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

c. caused a deprivation of educational benefit.

3. Nothing in Subsection A of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§501 through 536.

B. Separate Request for a Due Process Hearing. Nothing in §§501 through 536 shall be construed to preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

C. Findings and Decision to Advisory Panel and General Public. The LDE, after deleting any personally identifiable information, shall:

1. transmit the findings and decisions referred to in §512.A.5 to the BESE Special Education Advisory Council established under §167; and

2. make those findings and decisions available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§514. Finality of Decision; Appeal; and Compliance with Hearing Decisions

A. Finality of Hearing Decision. A decision made in a hearing conducted pursuant to §§507 through §530 through 534 is final, except that any party involved in the hearing may appeal the decision under the provisions of §516.

B. If a final hearing decision requires corrective action or other action, the LEA will be required to provide documentation periodically and at completion of the corrective action to the LDE.

1. The LDE will refer and recommend to BESE the denial or delay of funding or an offset of future funding for any LEA that after written due notice:

a. refuses or fails to submit requested documentation of corrective action; or

b. refuses or fails to take or complete required corrective action.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§515. Timelines and Convenience of Hearings and Reviews

A. A final hearing decision shall be reached and a copy of the decision mailed to each of the parties not later than 45 days after the expiration of the 30-day period under §510.B or the adjusted time periods described in §510.C.

B.1. A hearing officer may grant specific extensions of time beyond the periods set out in paragraph A of this section at the request of either party.

2. When an extension is granted, the hearing officer shall, on the day the decision is made to grant the extension, notify all parties and the LDE in writing, stating the date, time, and location of the rescheduled hearing.

C. Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and student involved.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§516. Civil Action

A. General. Any party aggrieved by the findings and decision, made under §§507 through 513 or §§530 through 534 has the right to bring a civil action with respect to the request for due process hearing under §507 or §530 through 532. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

B. Time Limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action.

C. Additional Requirements. In any action brought under Subsection A of this Section, the court:

1. receives the records of the administrative proceedings;

2. hears additional evidence at the request of a party; and

3. basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

D. Jurisdiction of District Courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy.

E. Rule of Construction. Nothing in these regulations restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the procedures under §507 shall be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

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

§517. Attorneys' Fees/Costs

A. In General

1. In any action or proceeding brought under Section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

a. the prevailing party who is the parent of a student with a disability;

b. the prevailing party who is the LDE or an LEA against the attorney of a parent who files a request for hearing or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continues to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. a prevailing party who is the LDE or an LEA against the attorney of the parent or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

B. Prohibition on Use of Funds

1. Funds under part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and Chapter 5 of these regulations.

2. Paragraph B.1 of this Section does not preclude the LDE from using funds under part B of the IDEA for conducting an action or proceeding under section 615 of the IDEA.

C. Award of Fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the IDEA consistent with the following:

1. Fees awarded under section 615(i)(3) of the IDEA shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

2. a. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

i. the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

ii. the offer is not accepted within 10 days; and

iii. the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

b. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in §506.

c. A meeting conducted pursuant to §510 shall not be considered:

i. a meeting convened as a result of an administrative hearing or judicial action; or

ii. an administrative hearing or judicial action for purposes of this section.

3. Notwithstanding Paragraph C.2 of this Section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

4. Except as provided in Paragraph C.5 of this Section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

a. the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

b. the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

c. the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

d. the attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §508.

5. The provisions of Paragraph C.4 of this Section do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§518. Student Status During Proceedings

A. Except as provided in §533, during the pendency of any administrative or judicial proceeding regarding a request for due process hearing under §507, unless the state or local agency and the parents of the student agree otherwise, the student involved in the complaint shall remain in his or her current educational placement.

B. If the request for due process hearing involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.

C. If the request for due process hearing involves an application for initial services for a child who is transitioning from part C of the IDEA to part B and is no longer eligible for part C services because the child has turned three, the public agency is not required to provide the part C services that the child had been receiving. If the child is found eligible for special education and related services under part B and the parent consents to the initial provision of special education and related services under §301.B, then the public agency shall provide those special education and related services that are not in dispute between the parent and the public agency.

D. If the hearing officer in a due process hearing conducted by the LDE agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the state and the parents for the purposes of Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§519. Surrogate Parents

A. General. Each public agency shall ensure that the rights of a student are protected when:

1. no parent (as defined in §905) can be identified;

2. the public agency, after reasonable efforts, cannot locate a parent;

3. the student is a ward of the state (including a ward of the court or of a State agency); or

4. the student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

B.1. Procedures for determining whether a student needs a surrogate parent are contained in the Surrogate Parent Handbook and as follows:

2. procedures for assigning a surrogate parent shall be developed and implemented by each LEA.

C. Duties of Public Agency. The duties of a public agency under Subsection A of this Section include the assignment of an individual to act as a surrogate for the parents. This shall include a method:

1. for determining whether a student needs a surrogate parent; and

2. for assigning a surrogate parent to the student.

D. Wards of the State. In the case of a student who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements in Subparagraph E.2.a and Subsection F of this Section.

E. Criteria for Selection of Surrogate Parents

1. The public agency may select a surrogate parent in any way permitted under state law.

2. Public agencies shall ensure that a person selected as a surrogate parent:

a. is not an employee of the LDE, the LEA, or any other agency that is involved in the education or care of the student;

b. has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

c. has knowledge and skills that ensure adequate representation of the student.

F. Non-Employee Requirement; Compensation. A person otherwise qualified to be a surrogate parent under Subsection E of this Section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

G. Unaccompanied Homeless Youth. In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to Subparagraph E.2.a of this Section, until a surrogate parent can be appointed who meets all of the requirements of Subsection E of this Section.

H. Surrogate Parent Responsibilities. The surrogate parent may represent the student in all matters relating to:

1. the identification, evaluation, and educational placement of the student; and

2. the provision of FAPE to the student.

I. LDE Responsibility. The LDE shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the student needs a surrogate parent.

J. Any person appointed as a surrogate parent shall be protected by the "limited liability" provisions set forth in L.R.S. 17:1958.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§520. Transfer of Parental Rights at the Age of Majority

A. General. When a student with a disability reaches the *age of majority* as defined in §905 that applies to all students (except for a student with a disability who has been determined to be incompetent under state law), he or she shall be afforded those rights guaranteed at such age.

1.a. The public agency shall provide any notice required by these regulations to both the student and the parent; and

b. All rights accorded to parents under part B of the IDEA shall transfer to the student.

2. All rights accorded to parents under part B of the IDEA shall transfer to students who are incarcerated in an adult or juvenile, State or local correctional institutions; and

3. Whenever rights transfer under these regulations, pursuant to Paragraph A.1 or A.2 of this Section, the agency shall notify the student and the parents of the transfer of rights.

B. When a student with a disability reaches the age of majority but has not been interdicted or the subject of a tutorship proceeding, the student's parent may allege to the LEA that the student lacks the ability to provide informed consent with respect to his or her educational program. In the event that the parent makes such an allegation, the student has the right to dispute the parent's allegation, either orally or in writing, or by any other method of communication.

1. Any protest or objection to the parent's allegation shall result in the student's educational rights being transferred fully to the student at the age of majority, unconditionally. If the student makes no such dispute or objection, the parent shall retain the student's educational rights.

2. The student's position is final and unappealable; however, at any time the student may revoke his assent to his parents' retention of rights. Upon such revocation, the student's rights immediately vest with the student.

3. LEAs are required to document in the student's IEP that the parents and the student have been informed of the rights herein and that they have accepted or declined these rights. If the student and/or parent is unable to sign the appropriate section of the IEP reflecting this information, the IEP team may complete that portion of the IEP on behalf of the student and/or parent, reflecting each party's position and acknowledging that the student and/or parent is unable to sign.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§521-529. Reserved

Subchapter B. Discipline Procedures for Students with Disabilities

§530. Authority of School Personnel

A. Case-by-Case Determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.

B. General

1. School personnel under this section may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §536).

2. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency shall provide services to the extent required under Subsection D of this Section.

C. Additional Authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to Subsection E of this Section, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in Subsection D of this Section.

D. Services

1. A student with a disability who is removed from his or her current placement pursuant to Subsection C or G of this Section shall:

a. continue to receive educational services, as provided in §101.A, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

b. receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

2. The services required by Paragraphs D.1, D.3, D.4, and D.5 of this Section may be provided in an interim alternative educational setting.

3. A public agency is only required to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a student without disabilities who is similarly removed.

4. After a student with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §536, school personnel, in consultation with at least

one of the student's teachers, determine the extent to which services are needed as provided in §101.A, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

5. If the removal is a change of placement under §536, the student's IEP Team determines appropriate services under Paragraph D.1 of this Section.

E. Manifestation Determination

1. Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the student's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

a. if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

b. if the conduct in question was the direct result of the LEA's failure to implement the IEP.

2. The conduct shall be determined to be a manifestation of the student's disability if the LEA, the parent, and relevant members of the student's IEP Team determine that a condition in either Subparagraph E.1.a or 1.b of this Section was met.

3. If the LEA, the parent, and relevant members of the student's IEP Team determine the condition described in Subparagraph E.1.b of this Section was met, the LEA shall take immediate steps to remedy those deficiencies.

F. Determination that Behavior was a Manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the student's disability, the IEP Team shall:

1. either:

a. conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

b. if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

2. except as provided in Subsection G of this Section, return the student to the placement from which the student was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

G. Special Circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

1. carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the LDE or an LEA;

2. knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LDE or an LEA; or

3. has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state or an LEA.

H. Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the LEA shall notify the parents of that decision, and provide the parents the procedural safeguards notice described in §505.

I. Definitions. For purposes of this section, the following definitions apply:

1. *Controlled Substance*—a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

2. *Illegal Drug*—a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

3. *Serious Bodily Injury*—the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

4. *Weapon*—the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§531. Determination of Setting

A. The student's IEP Team determines the interim alternative educational setting for services under §530.C, D.5 and G.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§532. Appeal

A. General. The parent of a student with a disability who disagrees with any decision regarding placement under §§530 and 531, or the manifestation determination under §530 E, or an LEA that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing pursuant to §§507 and 508.A and B.

B. Authority of Hearing Officer

1. A hearing officer under §511 hears and makes a determination regarding an appeal under Subsection A of this Section.

2. In making the determination under Paragraph B.1 of this Section, the hearing officer may:

a. return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of §530 or that the student's behavior was a manifestation of the student's disability; or

b. order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

3. The procedures under Subsection A and Paragraphs B.1 and 2 of this Section may be repeated, if the LEA believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

C. Expedited Due Process Hearing

1. Whenever a hearing is requested under paragraph A of this section, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing consistent with the requirements of §§507, 508A through C, and §§510 through 514, except as provided in Paragraphs C.2 through C4 of this Section.

2. The LDE shall arrange for the expedited due process hearing, which shall occur within 20 school days of the date the request for due process hearing is filed. The hearing officer shall make a determination within 10 school days after the hearing.

3. Unless the parents and the LEA agree in writing to waive the resolution meeting described in Subparagraph C.3.a of this Section, or agree to use the mediation process described in §506:

a. a resolution meeting shall occur within seven days of receiving notice of the request for due process hearing; and

b. the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the request for due process hearing.

4. The LDE requires the exclusion of evidence not disclosed to the other party three business days before the hearing, unless the parties agree otherwise. Except for the timelines modified in Paragraph C.3 of this Section, the LDE shall ensure that the requirements in §510 through §514 are met.

5. The decisions on expedited due process hearings are appealable consistent with §514.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§533. Placement during Appeal

A. When an expedited hearing under §532 has been requested by either the parent or the LEA, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §530.C or G, whichever occurs first, unless the parent and the LDE or LEA agree otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§534. Protections for Student not Determined Eligible for Special Education and Related Services

A. General. A student who has not been determined to be eligible for special education and related services under these regulations and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in these regulations if the public agency had knowledge (as determined in accordance with Subsection B of this Section) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

B. Basis of Knowledge. A public agency shall be deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred:

1. the parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

2. the parent of the student requested an evaluation of the student pursuant to §§301 through 312; or

3. the teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the agency or to other supervisory personnel of the agency.

C. Exception. A public agency would not be deemed to have knowledge under Subsection B of this Section if:

1. the parent of the student:

a. has not allowed an evaluation of the student pursuant to §§301 through 312; or

b. has refused services under the IDEA; or

2. the student has been evaluated in accordance with §§301 through 312 and determined to not be a student with a disability under the IDEA.

D. Conditions that Apply if no Basis of Knowledge

1. If a public agency does not have knowledge that a student is a student with a disability (in accordance with Subsections B and C of this Section) prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with Paragraph D.2 of this Section.

2.a. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under §530, the evaluation shall be conducted in an expedited manner.

b. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

c. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the IDEA, including the requirements of §§530 through 536 and section 612(a)(1)(A) of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§535. Referral to and Action by Law Enforcement and Judicial Authorities

A. Rule of Construction. Nothing in these regulations prohibits an agency from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from

exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

B. Transmittal of Records

1. An agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

2. An agency reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§536. Change of Placement because of Disciplinary Removals

A. For purposes of removals of a student with a disability from the student's current educational placement under §§530 through 535, a change of placement occurs if:

1. the removal is for more than 10 consecutive school days; or

2. the student has been subjected to a series of removals that constitute a pattern:

a. because the series of removals total more than 10 school days in a school year;

b. because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

c. because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

B.1. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

2. This determination is subject to review through due process and judicial proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§537. State Enforcement Mechanisms

A. Notwithstanding §§506.B.7 and 510.D.2, which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in these regulations that would prevent the LDE from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§538-599. Reserved.

Chapter 6. Monitoring, Enforcement, Confidentiality, and Program Information

Subchapter A. Monitoring, Technical Assistance, and Enforcement

§601. State Monitoring and Enforcement

A. The LDE shall monitor the implementation of these regulations, enforce these regulations in accordance with §605 and *Bulletin 1922—Compliance Monitoring Procedures*, and annually report on performance under these regulations.

B. The primary focus of the LDE's monitoring activities shall be on:

1. improving educational results and functional outcomes for all students with disabilities; and

2. ensuring that public agencies meet the program requirements under part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities.

C. As a part of its responsibilities under Subsection A of this Section, the LDE shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in Subsection D of this Section, and the indicators established by the secretary for the state performance plans.

D. The LDE shall monitor the LEAs located in the state, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

1. provision of FAPE in the least restrictive environment;

2. State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of *transition services* as defined in §905 and in 20 U.S.C. 1437(a)(9); and

3. disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§602. State Performance Plans and Data Collection

A. General. The LDE has in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of part B of the IDEA, and describes how the state will improve such implementation.

1. The LDE has submitted the state's performance plan to the secretary for approval in accordance with the approval process described in section 616(c) of the IDEA.

2. The LDE shall review its state performance plan at least once every six years, and submit any amendments to the secretary.

3. As part of the state performance plan, the LDE shall establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §601.D.

B. Data Collection

1. The LDE shall collect valid and reliable information as needed to report annually to the secretary on the indicators established by the Secretary for the state performance plan.

2. If the secretary permits the LDE to collect data on specific indicators through the state monitoring or sampling, and the LDE collects the data through state monitoring or sampling, the LDE shall collect data on those indicators for each LEA at least once during the period of the state performance plan.

3. Nothing in part B of the IDEA shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§603. State Use of Targets and Reporting

A. General. The LDE shall use the targets established in the state's performance plan under §602 and the priority areas described in §601.D to analyze the performance of each LEA.

B. Public Reporting and Privacy

1. Public Report

a. Subject to paragraph B1b of this section, the LDE shall:

i. report annually to the public on the performance of each LEA located in the state on the targets in the state's performance plan; and

ii. make the state's performance plan available through public means, including by posting on the LDE's web site and distribution through public agencies.

b. If the LDE, in meeting the requirements of Subparagraph B.1.a of this Section, collects performance data through state monitoring or sampling, the state shall include in its report under Subparagraph B.1.a.i of this section the most recently available performance data on each LEA, and the date the data were obtained.

2. State Performance Report. The LDE shall report annually to the secretary on the performance of the state under the state's performance plan.

3. Privacy. The LDE shall not report to the public or the secretary any information on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§604. LDE's Review, Determination, and Enforcement regarding LEA Performance

A. Review. The LDE shall annually review the performance of each LEA located in the state based on the targets in the state's performance plan.

B. Determination

1. General. Based on the information provided by the LEAs and reported in the state's annual performance report, information obtained through monitoring visits, and any other public information made available, the LDE shall determine if the LEA:

a. meets the requirements and purposes of part B of the IDEA;

b. needs assistance in implementing the requirements of part B of the IDEA;

c. needs intervention in implementing the requirements of part B of the IDEA; or

d. needs substantial intervention in implementing the requirements of part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§605. State Enforcement

A. Needs Assistance. If the LDE determines, for two consecutive years, that an LEA needs assistance under §604.B.1.b in implementing the requirements of part B of the IDEA, the LDE takes one or more of the following actions:

1. advises the LEA of available sources of technical assistance that may help the LEA address the areas in which the LEA needs assistance and requires the LEA to work with appropriate entities. Such technical assistance may include:

a. the provision of advice by experts to address the areas in which the LEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

b. assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

c. designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

d. devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D of the IDEA, and private providers of scientifically based technical assistance.

2. directs the use of LEA-level funds under section 611(e) of the IDEA on the area or areas in which the LEA needs assistance.

3. identifies the LEA as a high-risk grantee and imposes special conditions on the LEA's grant under part B of the IDEA.

B. Needs Intervention. If the LDE determines, for three or more consecutive years, that an LEA needs intervention under §604.B.1.c in implementing the requirements of part B of the IDEA, the following shall apply:

1. the LDE may take any of the actions described in paragraph A of this section; and

2. the LDE takes one or more of the following actions:

a. requires the LEA to prepare a corrective action plan or improvement plan if the LDE determines that the LEA should be able to correct the problem within one year;

b. requires the LEA to enter into a compliance agreement under section 457 of the General Education Provisions Act (GEPA), as amended, 20 U.S.C. 1221 et seq., if the LDE has reason to believe that the LEA cannot correct the problem within one year;

c. for each year of the determination, withholds not less than 20 percent and not more than 50 percent of the LEA's funds under section 611(e) of the IDEA, until the LDE determines the LEA has sufficiently addressed the areas in which the LEA needs intervention.

d. seeks to recover funds under section 452 of GEPA;

e. withholds, in whole or in part, any further payments to the LEA under part B of the IDEA.

f. Refers the matter for appropriate enforcement action, which may include referral to BESE.

C. Needs Substantial Intervention. Notwithstanding Subsection A or B of this Section, at any time that the LDE determines that an LEA needs substantial intervention in implementing the requirements of part B of the IDEA or that there is a substantial failure to comply with any condition of the state's or LEA's eligibility under part B of the IDEA, the LDE takes one or more of the following actions:

1. recovers funds under section 452 of GEPA;

2. withholds, in whole or in part, any further payments to the LEA under part B of the IDEA.

D. If the LDE determines that an LEA is not meeting the requirements of part B of the IDEA, including the targets in the state's performance plan, the LDE shall prohibit the LEA from reducing the LEA's maintenance of effort under §204 for any fiscal year.

E. Nothing in this section shall be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§606. Withholding Funds

A. Opportunity for Hearing. Prior to withholding any funds under these regulations and part B of the IDEA, the LDE shall provide reasonable notice and an opportunity for a hearing to the public agency involved, in accordance with §155 of these regulations and *Bulletin 1922—Compliance Monitoring Procedures*.

B. Suspension. Pending the outcome of any hearing to withhold payments under Subsection A of this Section, the LDE may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under part B of the IDEA, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under part B of the IDEA should not be suspended.

C. Nature of Withholding

1. If the LDE determines that it is appropriate to withhold further payments under §605.B.2 or C.2, the LDE may determine:

a. that the withholding will be limited to programs or projects, or portions of programs or projects, that affected the LDE's determination under §604.B.1; or

b. that the LDE will not make further payments to public agencies that caused or were involved in the LDE's determination under §604.B.1.

2. Until the LDE is satisfied that the condition that caused the initial withholding has been substantially rectified:

a. payments to the public agency under part B of the IDEA shall be withheld in whole or part; and

b. payments by the LDE under part B of the IDEA shall be limited to public agencies whose actions did not cause or were not involved in the LDE's determination under §604.B.1, as the case may be.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§607. Reserved.

§608. Secretary's Review, Determination, and Enforcement regarding State Performance

A. The secretary's review, determination, and enforcement regarding the state's performance shall be governed by 34 CFR 300.603 through 607 and 610.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§609. Reserved.

Subchapter B. Confidentiality of Information

§610. Reserved.

§611. Definitions as used in §§611-625

Destruction—physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education Records—the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

Participating Agency—any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under part B of the IDEA.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

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

§612. Notice to Parents

A. The LDE shall give notice that is adequate to fully inform parents about the requirements of §123, including:

1. a description of the extent that the notice is given in the native languages of the various population groups in the state;

2. a description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the LDE intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

3. a summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

4. a description of all of the rights of parents and students regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

B. Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§613. Access Rights

A. Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under these regulations. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §507 or §§530 through 532, or resolution session pursuant to §510, and in no case more than 45 days after the request has been made.

B. The right to inspect and review education records under this section includes:

1. the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

2. the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

3. the right to have a representative of the parent inspect and review the records.

C. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§614. Record of Access

A. Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§615. Records on More than one Student

A. If any education record includes information on more than one student, the parents of those students have the right to inspect and review only the information relating to their child or to be informed of that specific information.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§616. List of Types and Locations of Information

A. Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§617. Fees

A. Each participating agency may charge a fee for copies of records that are made for parents under these regulations if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

B. A participating agency may not charge a fee to search for or to retrieve information under these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§618. Amendment of Records at Parent's Request

A. A parent who believes that information in the education records collected, maintained, or used under these regulations is inaccurate or misleading or violates the privacy or other rights of the student may request the participating agency that maintains the information to amend the information.

B. The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

C. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under §619.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§619. Opportunity for a Hearing

A. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§620. Result of Hearing

A. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent in writing.

B. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent of the parent's right to place in the records the agency maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

C. Any explanation placed in the records of the student under this section shall:

1. be maintained by the agency as part of the records of the student as long as the record or contested portion is maintained by the agency; and

2. if the records of the student or the contested portion are disclosed by the agency to any party, the explanation shall also be disclosed to the party.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§621. Hearing Procedures

A. A hearing held under §619 shall be conducted according to the procedures in 34 CFR 99.22.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§622. Consent

A. Parental consent shall be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with Paragraph B.1 of this Section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

B.1. Except as provided in Paragraphs B.2 and B.3 of this Section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of these regulations.

2. Parental consent, or the consent of an eligible student who has reached the age of majority under state law, shall be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with §321.B.3.

3. If a student is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent shall be obtained before any personally identifiable information about the student is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§623. Safeguards

A. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

B. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

C. All persons collecting or using personally identifiable information shall receive training or instruction regarding the state's policies and procedures under §123 and 34 CFR part 99.

D. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§624. Destruction of Information

A. The public agency shall inform parents when personally identifiable information collected, maintained, or used under these regulations is no longer needed to provide educational services to the student.

B. The information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§625. Student's Rights

A. The LDE shall have in effect policies and procedures regarding the extent to which students are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the student and type or severity of disability.

B. Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

C. If the rights accorded to parents under part B of the IDEA are transferred to a student who reaches the age of majority, consistent with §520, the rights regarding educational records in §§613 through 624 shall also be transferred to the student. However, the public agency shall provide any notice required under section 615 of the IDEA to the student and the parents.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§626. Enforcement

A. The LDE shall have in effect the policies and procedures, including sanctions that the state uses, to ensure that its policies and procedures consistent with §§611 through 625 are followed and that the requirements of the IDEA and these regulations are met.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§§627-645. Reserved.

§646. Disproportionality

A. General. The LDE shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to:

1. the identification of students as students with disabilities, including the identification of students as students with disabilities in accordance with a particular impairment described in section 602(3) of the IDEA;

2. the placement in particular educational settings of these students; and

3. the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

B. Review and Revision of Policies, Practices, and Procedures. In the case of a determination of significant disproportionality with respect to the identification of students as students with disabilities, or the placement in particular educational settings of these students, in accordance with Subsection A of this Section, the LDE shall:

1. provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.

2. require any LEA identified under Subsection A of this Section to reserve the maximum amount of funds under

section 613(f) of the IDEA to provide comprehensive coordinated early intervening services to serve students in the LEA, particularly, but not exclusively, students in those groups that were significantly overidentified under Subsection A of this Section; and

3. require the LEA to publicly report on the revision of policies, practices, and procedures described under Paragraph B.1 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§647-699. Reserved.

Chapter 7. Authorization, Allotment, Use of Funds, and Authorization of Appropriations.

Subchapter A. Allotments, Grants, and Use of Funds

§701. Grants to the State

A. Purpose of Grants. The Secretary makes grants to the state to assist the state in providing special education and related services to students with disabilities in accordance with part B of the IDEA.

B. The secretary's allotments, grants, and use of funds to the state are governed by 34 CFR 300.700 through 703, 717 and 718.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§702.-703. Reserved.

§704. State-level Activities

A. State Administration. For the purpose of administering part B of the IDEA, including Subsection C of this Section, section 619 of the IDEA, and the coordination of activities under part B of the IDEA with, and providing technical assistance to, other programs that provide services to students with disabilities, the state's administrative authority and responsibility is governed by 34 CFR 300.704A.

B. Other State-Level Activities

1. The LDE may reserve a portion of its allocations for other state-level activities. The maximum amount that the state may reserve for other state-level activities is governed by 34 CFR 300.704(b)(1) and (2).

2. Some portion of the funds reserved under Paragraph B.1 of this Section shall be used to carry out the following activities:

a. for monitoring, enforcement, and complaint investigation; and

b. to establish and implement the mediation process required by section 615E of the IDEA, including providing for the costs of mediators and support personnel;

3. Funds reserved under Paragraph B.1of this Section also may be used to carry out the following activities:

a. for support and direct services, including technical assistance, personnel preparation, and professional development and training;

b. to support paperwork reduction activities, including expanding the use of technology in the IEP process;

c. to assist LEAs in providing positive behavioral interventions and supports and mental health services for students with disabilities;

d. to improve the use of technology in the classroom by students with disabilities to enhance learning;

e. to support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for students with disabilities;

f. development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

g. to assist LEAs in meeting personnel shortages;

h. to support capacity building activities and improve the delivery of services by LEAs to improve results for students with disabilities;

i. alternative programming for students with disabilities who have been expelled from school, and services for students with disabilities in correctional facilities, students enrolled in state-operated or state-supported schools, and students with disabilities in charter schools;

j. to support the development and provision of appropriate accommodations for students with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of students with disabilities, in accordance with sections 1111(b) and 6111 of the ESEA; and

k. to provide technical assistance to schools and LEAs, and direct services, including supplemental educational services as defined in section 1116(e) of the ESEA to students with disabilities, in schools or LEAs identified for improvement under section 1116 of the ESEA on the sole basis of the assessment results of the disaggregated subgroup of students with disabilities, including providing professional development to special and regular education teachers, who teach students with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the state under section 1111(b)(2)(G) of the ESEA.

C. Local Educational Agency High Cost Fund. For the purpose of assisting LEAs (including a charter school that is an LEA or a consortium of LEAs) in addressing the needs of high need students with disabilities, the state has the option to reserve for each fiscal year 10 percent of the amount of funds the state reserves for other state-level activities under Paragraph B.1 of this Section in accordance with 34 CFR 300.704(c).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§705. Subgrants to LEAs

A. Subgrants Required. If the LDE receives a grant under section 611 of the IDEA for any fiscal year, it shall distribute any funds the LDE does not reserve under §704 to LEAs (including public charter schools that operate as LEAs) in the state that have established their eligibility under section 613 of the IDEA for use in accordance with part B of the IDEA.

B. Allocations to LEAs. For each fiscal year for which funds are allocated to the LDE under §703, the LDE shall allocate funds as follows:

1. Base Payments. The LDE first shall award each LEA described in Subsection A of this Section the amount the LEA would have received under section 611 of the IDEA for fiscal year 1999, if the state had distributed 75 percent of its grant for that year under section 611(d) of the IDEA, as that section was then in effect.

2. Base Payment Adjustments. For any fiscal year after 1999:

a. if a new LEA is created, the LDE shall divide the base allocation determined under Paragraph B.1 of this Section for the LEAs that would have been responsible for serving students with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of students with disabilities ages 3 through 21 currently provided special education by each of the LEAs:

b. if one or more LEAs are combined into a single new LEA, the LDE shall combine the base allocations of the merged LEAs; and

c. if, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to students with disabilities ages 3 through 21 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of students with disabilities ages 3 through 21 currently provided special education by each affected LEA.

3. Allocation of Remaining Funds. After making allocations under Paragraph B.1 of this Section, as adjusted by Paragraph B.2 of this Section, the LDE shall:

a. allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of students enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

b. allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of students living in poverty, as determined by the LDE.

C. Reallocation of Funds. If the LDE determines that an LEA is adequately providing FAPE to all students with disabilities residing in the area served by that agency with State and local funds, the LDE may reallocate any portion of the funds under these regulations that are not needed by that LEA to provide FAPE to other LEAs in the state that are not adequately providing special education and related services to all students with disabilities residing in the areas served by those other LEAs.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

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

§706-716. Reserved.

§717. Definitions Applicable to Allotments, Grants, and Use of Funds

A. As used in this chapter:

1. *State*—the state of Louisiana; and

2. *Average Per-Pupil Expenditure in Public Elementary Schools and Secondary Schools in the United States*—

a. without regard to the source of funds:

i. the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all LEAs in the 50 States and the District of Columbia); plus

ii. any direct expenditures by the state for the operation of those agencies; divided by

iii. the aggregate number of students in average daily attendance to whom those agencies provided free public education during that preceding year.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§718. Acquisition of Equipment and Construction or Alteration of Facilities

A. General. If the secretary determines that a program authorized under part B of the IDEA will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the secretary may allow the use of those funds for those purposes.

B. Compliance with Certain Regulations. Any construction of new facilities or alteration of existing facilities under Subsection A of this Section shall comply with the requirements of:

1. Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the Americans with Disabilities Accessibility Standards for Buildings and Facilities); or

2. Appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§719-799. Reserved.

Chapter 8. Preschool Grants for Students with Disabilities and the Responsibilities of DHH and the LDE

§801. In General

A. Preschool grants for students with disabilities are governed by 34 CFR 300.801-818.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§802.-818. Reserved.

§819. DHH and the LDE's Responsibilities under IDEA and the Louisiana Education of Children with Exceptionalities Act

A. The legal relationship between the Louisiana Department of Health and Hospitals (DHH) and the Louisiana Department of Education (LDE), shall be governed by this section and §154, for the interagency coordination of the IDEA and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., and encompasses all offices, divisions, bureaus, units, and programs at the state, regional, and local levels within each department.

B. These regulations are promulgated to comply with the obligations imposed upon the state of Louisiana and its agencies at 20 USC §1412 and 34 CFR 300.154.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§820. Definitions

A. For the purposes of this Chapter, the following definitions apply.

1. *Educational Services*—all other services, including but not limited to academic services, extracurricular activities, transportation, related services for which DHH is not legally responsible, and any other service included on a student's IEP but not provided by DHH, through Medicaid or any other program operated by DHH, under any existing state or federal law.

2. *Eligibility Criteria for DHH Health and Medical Services*—the criteria for individuals receiving a specific health or medical service provided by DHH.

3 *Family*—the child's parents or legal guardians as well as surrogate parents and persons acting as parents as defined by these regulations.

4. *IEP*—Individualized Education Program, as defined in §905.

5. *LEA*—a local educational agency, as defined in §905.

6. *Related Services*—in addition to the definition of these terms in IDEA and as defined in §905, in the context of these regulations, the term means those services which DHH, through Medicaid or any other program operated by DHH, is required by any existing state or federal law to provide to a qualified recipient in the state of Louisiana.

7. *Services*—any special education and/or related services as defined in IDEA and in §905.

8. *Student*—any individual between the ages of 3 and 22 years and who is enrolled in a Louisiana Local Education Agency ("LEA") or is the responsibility of the LDE and/or the LEAs.

9. *Student with a Disability*—as defined in §905.

10. *Transition Services*—transition services, as defined in §905.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§821. Responsibility for Services

A. In order to ensure that all services described in §822 that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute, the following requirements are imposed on LDE and DHH.

1. Agency Financial Responsibility. All relevant federal and State mandates apply. LDE and DHH, as obligated under federal or State law, shall use allocated federal, state and local funds to provide, pay, or otherwise arrange for services on the IEP that are necessary to ensure each eligible student receives a free appropriate public education (FAPE) as written on the IEP. The financial responsibility for these services shall be governed by all pertinent federal and State laws, including but not limited to 20 U.S.C. §1400, et seq., 34 CFR Parts 300, 42 U.S.C. §1396, 42 CFR Part 430, LSA-R.S. 17:1941, et seq., and these regulations.

a. If DHH is otherwise obligated under federal or state law, or assigned responsibility under DHH policy or pursuant to 34 CFR §300.142 and 154 to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in 34 CFR §300.6 relating to assistive technology devices, 34 CFR §300.34 relating to related services, 34 CFR §300.42 relating to supplementary aids and services, and 34 CFR §300.43 relating to transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

b. DHH may not disqualify an eligible service for Medicaid reimbursement because it is on an IEP or because that service is provided in a school context or any other setting that is a most integrated setting or least restrictive environment in order to provide a free appropriate public education. DHH is required to provide all eligible services to the same extent the individual would receive these services under federal and state law and regulation without eligibility for IDEA.

c. The financial responsibility of DHH shall precede the financial responsibility of the LEA or the state agency responsible for developing the student's IEP.

2. Conditions and Terms of Reimbursement. DHH will fund or provide services that are included on an IEP to the extent that such services are services that are funded or provided to individuals eligible under any federal or state program provided by DHH. If any program under the auspices of DHH fails to provide or pay for these special education and related services, the LEA and/or the LDE shall be responsible for providing or paying for these services. The LDE or the LEA will then claim reimbursement from DHH, having failed to provide or pay for these services. DHH is then required to reimburse the LEA or the LDE for the services that DHH is otherwise obligated to provide. DHH is required to fund or provide services that are included on an IEP to the extent that such services are services for which the individual is eligible under any federal or state program administered by DHH.

3. Interagency Disputes. Disputes relating to the provision of services pursuant to 20 U.S.C. §1400, et seq., and the Louisiana Education of Children with Exceptionalities Act, R.S. 17:1941, et seq., shall be addressed in the following manner:

a. if a family disputes the actions of an LEA, that family may either file a complaint with the LDE under the procedures described in §151 through 153 or a request due process hearing under the procedures described §§507 through 520;

b. if a family disputes the actions of DHH and that family or student is a client of or eligible for DHH services, that dispute may be addressed through the DHH appeals process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation;

c. if an LEA disputes the actions of the LDE, that LEA may file suit against the LDE only in the United States District Court for the Middle District of Louisiana or the Nineteenth Judicial District Court for the Parish of East Baton Rouge;

d. if an LEA disputes the actions of DHH, as a Medicaid provider, that LEA may appeal through the DHH appeal process, as authorized in R.S. 46:107 or any other relevant State or federal statute or regulation;

e. an interagency dispute between DHH and the LDE, which involves either program or financial responsibility, will be referred to the Superintendent of Education and the Secretary of the Department of Health and Hospitals for mediation. If the dispute cannot be resolved in mediation, it will be referred to the Office of the Governor for resolution. If a dispute continues beyond these interventions, either DHH or the LDE may seek resolution from a court of competent authority.

f. during the pendency of any dispute, a student's LEA bears full responsibility for program and/or financial obligations, to ensure that the student's IEP is implemented fully and that the student is receiving FAPE. If the LEA is unable or unwilling to provide FAPE, the LDE is responsible for those program and/or financial obligations.

4. Coordination of Services Procedures. The LDE and DHH shall coordinate services to students with disabilities by complying with procedures that are specific to each agency, including, but not limited to, the following procedures.

a. The LDE bears the following responsibilities:

i. maintain the Child Find system under part B of IDEA, specifically, the identification, location, and evaluation of students from 3 through 21 years of age who are suspected of having a disability;

ii. provide DHH with a listing of its primary contacts and service description for the Child Find system on a school district basis for DHH to make available to its regional and local offices;

iii. ensure that each eligible student will receive a timely, appropriate multidisciplinary evaluation. In order to reduce the duplication of effort, services, and paperwork; the LEAs will implement a policy to ensure evaluations conducted by programs in DHH are utilized in the multidisciplinary evaluation of students suspected of being a student with a disability and in the reevaluation of students;

iv. ensure that each eligible student with a disability receives a free appropriate public education (FAPE) in accordance with an IEP. FAPE includes special education and related services;

v. ensure that each eligible student has an IEP developed and implemented in accordance with IDEA;

vi. monitor the provision of services on IEPs through assurances with LEAs; and

vii. monitor the implementation of the IEP and assure that resources necessary for the implementation of services on the IEP will be made available through federal or State funds.

b. DHH bears the following responsibilities:

i. provide access to medical services offered by DHH through application for such services at DHH office locations in all regions of the state where the student currently reside. The student shall meet the eligibility criteria for the medical services for which the student is applying. Establishing eligibility and need for services is the responsibility of DHH;

ii. DHH shall not reduce the medical services which it would be required to provide to a student with a disability solely because those services are included in the IEP;

iii. refer students to the LEA upon suspicion of a disability. DHH personnel will share available information on students receiving joint services from the LDE and DHH with the proper written consent;

iv. provide information at the consent and request of a parent; and

v. ensure that a student with a disability can access Medicaid services for which the student is eligible. DHH policy and procedures shall not preclude an LEA from enrolling as a provider in the Medicaid program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§822. Obligations of DHH

A. If DHH is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to §§819 through 823, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §905 relating to assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services) that are necessary for ensuring FAPE to students with disabilities within the state, DHH shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

B. DHH may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

C. If DHH fails to provide or pay for the special education and related services described in paragraph A of this section, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA or State agency may then claim reimbursement for the services from DHH, having failed to provide or pay for these services, and DHH shall reimburse the LEA or State agency in accordance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§823. General Provisions Governing DHH and LDE's Responsibilities

A. Confidentiality of Information. In accordance with federal and state law, information on a student's disability is confidential. For the purposes of identification, location, evaluation, development, and implementation of the IEP; information and records on mutually served students may be exchanged between the LDE and DHH with the written, informed consent of the parent(s) of each student. The method of exchanging information may be electronic or written. When a specific student or family is identified, the exchange shall be written with proper consent obtained.

B. Ancillary Agreements. Regional and/or local agreements may be developed and implemented between the respective programs within the LDE and DHH for the purposes of determining and identifying interagency coordination to promote the coordination of services and the timely and appropriate delivery of services to each eligible student and family. The services may be provided either directly or through a contract or other arrangement. These agreements are considered binding for the programs under the auspices of the LDE and DHH only after written approval of such regional or local agreements by the

Secretary of DHH and the state Director of Special Education in the LDE, respectively.

C. Joint Coordination and Monitoring. DHH and LDE are required to develop jointly state level annual goals that are based on needs/data. DHH and LDE are required to evaluate jointly the overall effectiveness of these goals. Each department is required to designate a liaison at the state level to coordinate the activities and monitor the compliance of these regulations. Each agency is required to appoint an interagency committee to review and evaluate the effectiveness of these regulations, facilitate their implementation, and make recommendations for revisions as deemed appropriate.

D. Modifications to these Requirements. As the lead agency for implementation of the Louisiana Education of Children with Exceptionalities Act and the Individuals with Disabilities Education Act in Louisiana, the LDE is the sole agency with authority to promulgate regulations pursuant to those statutes and no modification to these requirements shall be made by any other agency by regulation, policy, or otherwise, without the express written consent of the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§824.-899. Reserved.

Chapter 9. General

Subchapter A. Purposes and Applicability

§901. Purposes

A. The purposes of these regulations are the following:

1. to ensure that all students with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

2. to ensure that the rights of students with disabilities and their parents are protected;

3. to assist localities and educational service agencies to provide for the

education of all students with disabilities; and

4. to assess and ensure the effectiveness of efforts to educate students with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§902. Applicability

A. Public Agencies within the state. The provisions of these regulations:

1. apply to all political subdivisions of the state that are involved in the education of students with disabilities, including:

a. the Louisiana Department of Education, referenced in these regulations as the "LDE";

b. local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA;

c. other State agencies and schools (such as Department of Health and Hospitals, Department of Social Services, Special School District, and Board Special Schools);

d. state and local juvenile and adult correctional facilities; and

2. are binding on each public agency in the state that provides special education and related services to students with disabilities, regardless of whether that agency is receiving funds under part B of the IDEA.

B. Private Schools and Facilities. Each public agency in the state is responsible for ensuring that the rights and protections under part B of the IDEA are given to students with disabilities:

1. referred to or placed in private schools and facilities by that public agency; or

2. placed in private schools by their parents under the provisions of §148.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR34:

Subchapter B. Definitions used in these Regulations

§903. Definitions/Terms

A. The terms defined in §§904 and 905 of this chapter are used throughout these regulations. Unless expressly provided to the contrary, each definition/term used in these regulations shall have the meaning established by this Chapter.

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§904. Abbreviations/Acronyms used in these Regulations

BSS—BESE Special Schools.

DHH—State Department of Health and Hospitals.

DPS&C—State Department of Public Safety and Corrections.

DSS—State Department of Social Services.

FAPE—Free Appropriate Public Education.

FERPA—Family Educational Records and Privacy Act of 1974.

IDEA—Part B of the Individuals with Disabilities Education Act which amends the Education for All Handicapped Children Act of 1975, formerly known as EHA (P.L. 94-142).

IEP—The Individualized Education Program required by §320 of these regulations.

LDE – Louisiana State Department of Education.

LEA—Local Education Agency.

LRE—Least Restrictive Environment.

LSD—Louisiana School for the Deaf.

LSEC—Louisiana Special Education Center.

LSVI—Louisiana School for the Visually Impaired.

NCLB—No Child Left Behind.

NIMAC—National Instructional Materials Access Center.

NIMAS—National Instructional Materials Accessibility Standard.

ODR—Officially Designated Representative.

OYD—Office of Youth Development.

SBESE—State Board of Elementary and Secondary Education.

Section 504—Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

SSD—Special School District.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

§905. Definitions

Adapted Physical Education—specially designed physical education for eligible students with disabilities.

Age of Majority—as defined in Louisiana, means 18 years of age.

Alternate Assessment—see *Bulletin 111—The Louisiana School, District, and State Accountability System.*

Assistive Technology Device—any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a student with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device.

Assistive Technology Service—any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing educational and rehabilitation plans and programs;

5. training or technical assistance for a student with a disability, or, if appropriate, that student's family; and

6. training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

At No Cost—see *Special Education*.

Audiology—see *Related Services*.

Autism—see *Student with a Disability*.

Business Day—see *Day*.

Certificate of Achievement—

1. An exit document issued to a student with a disability after he or she has achieved certain competencies and has met specified conditions as listed below. The receipt of a certificate of achievement shall not limit a student's continuous eligibility for services under these regulations unless the student has reached the age of 22.

a. The student has a disability under the mandated criteria.

b. The student has participated in LEAP Alternate Assessment (LAA).

c. The student has completed at least 12 years of school or has reached the age of 22 (not to include students younger than 16).

d. The student has met attendance requirements.

e. The student has addressed the general education curriculum as reflected on the student's IEP.

f. Transition planning for the student has been completed and documented.

Change of Placement—see §116 and §536 of these regulations.

Charter School—the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.*

Child Find—see §111 of these regulations.

Child with a Disability—see *Student with a Disability*.

Consent—that:

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;

2. the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought; the consent describes that activity and lists the records (if any) that will be released and to whom; and

3.a. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

b. If a parent revokes consent, that revocation is not retroactive (i.e., does not negate an action that has occurred after the consent had been given and before the consent was revoked).

Controlled Substance—refer to §530.I.1 of these regulations.

Core Academic Subjects—English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Counseling Services—see *Related Services*.

Day; Business Day; School Day—

1. *Day*—calendar day unless otherwise indicated as business day or school day.

2. *Business day*—Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §148D1b.

3.a. *School Day*—any day, including a partial day that students are in attendance at school for instructional purposes.

b. School day has the same meaning for all students in school, including students with and without disabilities.

Deaf-Blindness—see *Student with a Disability*.

Deafness—see *Student with a Disability*.

Developmental Delay—see *Student with a Disability*.

Disability—see *Student with a Disability*.

Due Process—see Chapter 5 of these regulations.

Early Identification and Assessment of Disabilities in Students—see *Related Services*.

Early Intervening Services—see §226.

Early Resolution Process (ERP)—a systematic informal process for dispute resolution available prior to or in connection with State Administrative Complaints in accordance with §§151-153.

Educational Service Agency—

1. A regional public multiservice agency:

a. authorized by State law to develop, manage, and provide services or programs to LEAs;

b. recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state.

2. This definition includes any other public institution or agency having administrative control and direction over a public elementary schools or secondary school; and

3. includes entities that meet the definition of an intermediate educational unit in section 602(23) of the IDEA as in effect prior to June 4, 1997.

Elementary School—a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

Emotional Disturbance—see *Student with a Disability*.

Equipment—

1. machinery, utilities, built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

2. all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Evaluation—procedures used in accordance with §§305 through 308 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs.

Extended School Year (ESY) Services—see §106 of these regulations.

Excess Costs—those costs that are in excess of the average annual per student expenditure in a LEA during the preceding school year for an elementary or secondary school student, as may be appropriate, and that shall be computed after deducting:

1. amounts received:
   a. under part B of the IDEA;
   b. under part A of Title I of the ESEA; and
   c. under parts A and B of Title III of the ESEA; and

2. any state or local funds expended for programs that would qualify for assistance under any of the parts described in Paragraph 1. This definition, but excluding any amounts for capital outlay or debt service. (See Appendix A to the IDEA for an example of how excess costs shall be calculated.)

Free Appropriate Public Education or *FAPE*—special education and related services that:

1. are provided at public expense, under public supervision and direction, and without charge;

2. meet the standards of the LDE; including the requirements of these regulations;

3. include an appropriate preschool, elementary school, or secondary school education in the state; and

4. are provided in conformity with an Individualized Education Program (IEP) that meets the requirement of §§320 through 324.

Foster Parent—see *Parent.*

Hearing Impairment—see *Student with a Disability*.

Highly Qualified Special Education Teachers—

1. Requirements for Special Education Teachers Teaching Core Academic Subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term *highly qualified* has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also:

   a. include the requirements described in Paragraph 2 of this definition; and

   b. include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of Paragraphs 3 and 4 of this definition.

2. Requirements for Special Education Teachers in General

   a. When used with respect to any public elementary school or secondary school special education teacher teaching in the state, highly qualified requires that:

      i. the teacher has obtained full state certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the state special education teacher licensing examination, and holds a license to teach in the state as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the state's public charter school law;

      ii. the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

      iii. the teacher holds at least a bachelor's degree.

   b. A teacher will be considered to meet the standard in Clause 2.a.i.of this definition if that teacher is participating in an alternative route to special education certification program under which:

      i. the teacher:

         (a). receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

         (b). participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

         (c). assumes functions as a teacher only for a specified period of time not to exceed three years; and

         (d). demonstrates satisfactory progress toward full certification as prescribed by the state; and

      ii. the state ensures, through its certification and licensure process, that the provisions in Clause 2.b.i of this definition are met.

   c. Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in Subparagraph 2.a or the requirements in Clause 2.a.iii and Subparagraph 2.b of this definition.

3. Requirements for Special Education Teachers Teaching to Alternate Achievement Standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

   a. meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle,

or secondary school teacher who is new or not new to the profession; or

b. meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

4. Requirements for Special Education Teachers Teaching Multiple Subjects. Subject to Paragraph 5 of this Subsection, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students with disabilities, highly qualified means that the teacher may either:

a. meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

b. in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

c. in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

5. Separate HOUSSE standards for special education teachers. The State has developed a HOUSSE, which is found in *Bulletin 111—The Louisiana School, District, and State Accountability System*, which does not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers:

a. the state may develop a separate HOUSSE for special education teachers; and

b. the standards described in Paragraph E.1 of this definition may include single HOUSSE evaluations that cover multiple subjects.

6. Rule of Construction. Notwithstanding any other individual right of action that a parent or student may maintain under these regulations, nothing in these regulations shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular state or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§151-153 about staff qualifications with the state as provided for under these regulations.

7. Applicability of Definition to ESEA; and Clarification of New Special Education Teacher

a. A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

b. For purposes of Paragraph D.3 of this definition, a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

8. Private School Teachers Not Covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school students with disabilities under §138.

Homeless Students—has the meaning given the term homeless students and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 et seq.

Illegal Drug—see §530.I of these regulations.

Include—that the items named are not all of the possible items that are covered, whether like or unlike the one named.

Indian and Indian Tribe—

1. *Indian*—an individual who is a member of an Indian tribe.

2. *Indian Tribe*—any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.).

3. Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a State Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

Independent Educational Evaluation (IEE)—see §503 of these regulations.

Individual Education Plan Facilitation—an alternative dispute resolution method developed by the LDE. This option is available to parents and school districts when both agree that it would be valuable to have a neutral person (IEP Facilitator) present at an IEP meeting to assist them in discussing issues regarding an IEP. The role of the IEP Facilitator is to assist in creating an atmosphere for fair communication and the successful drafting of an IEP for the student. Either parent or district can request IEP Facilitation; however, since the process is voluntary, both sides shall agree to participate in the IEP facilitation process. Like mediation, the IEP facilitation is initiated by request to the LDE, and is at no cost to the parents or districts.

Individualized Education Program or IEP—a written statement for a student with a disability that is developed, reviewed, and revised in accordance with §§320 through 324.

Individualized education program team or *IEP Team*—a group of individuals described in §321 of these regulations that is responsible for developing, reviewing, or revising an IEP for a student with a disability.

Individualized Family Service Plan (IFSP)—a written plan for providing early intervention services for infants and toddlers and their families who are eligible under part C of IDEA.

Infant or Toddler with a Disability—

1. an individual under three years of age who needs early intervention services because the individual:

a. is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

b. has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

2. may also include, at the state's discretion:

a. at-risk infants and toddlers; and

b. students with disabilities who are eligible for services under section 619 and who previously received services under part C of the IDEA until such students enter or are eligible under State law to enter kindergarten or elementary school, as appropriate, provided that any programs under part C of the IDEA serving such students shall include:

i. an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

ii. a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under part C of the IDEA or participate in preschool programs under section 619.

Institution of Higher Education—has the meaning given the term in section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1021 *et seq*. (HEA).

Interagency Agreement—an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement shall be consistent with the mandatory provision of §154.

Interim Alternative Educational Setting—see §§530 through 534 of these regulations.

Interpreting Services—see *Related Services*.

Least Restrictive Environment—the educational placement of a student with a disability in a manner consistent with the Least Restrictive Environment Requirements in §115 and116 of these regulations.

Limited English Proficient—the meaning given the term in section 9101(25) of the ESEA.

Local Education Agency or LEA—

1. General. Local Education Agency or LEA—a public board of education or other public authority legally constituted within the state for either administrative control or direction of or to perform a service function for public elementary schools or secondary schools in a city, parish, school district, or other political subdivision of the state or for a combination of school districts or parishes as are recognized in the state as an administrative agency for its public elementary or secondary schools.

2. Educational Service Agencies and Other Public Institutions or Agencies. The term includes:

a. an educational service agency, as defined this section; and

b. any other public institution or agency having administrative control and direction of a public elementary or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

3. BIA Funded Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the IDEA with the smallest student population.

Maintenance of Effort—see §204 of these regulations.

Manifestation Determination Review—see §530.E of these regulations.

Medical Services—see *Related Services*.

Mental Disability—see *Student with a Disability*.

Multiple Disabilities—see *Student with a Disability*.

Native Language—

1. When used with respect to an individual who is limited English proficient, has the following meaning:

a. the language normally used by that individual, or in the case of a student, the language normally used by parents of the student, except as provided in Paragraph A.2 of this definition.

b. In all direct contact with the student, (including the evaluation of the student), the language is the one normally used by the student in the home or learning environment.

2. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Occupational Therapy—see *Related Services*.

Orientation and Mobility Training—see *Related Services*.

Orthopedic Impairment—see *Student with a Disability*.

Other Health Impairment—see *Student with a Disability*.

Paraprofessional—is a person who assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of special education services to students with disabilities and who meets all state and federal requirements to serve as a paraprofessional.

Parent—

1.a. a biological, or adoptive parent of a child;

b. a foster parent;

c. a guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, but not the state if the student is a ward of the state;

d. an individual acting in the place of a biological or adoptive parent (including a grandparent, or stepparent or other relative) with whom the student lives, or an individual who is legally responsible for the student's welfare; or

e. a surrogate parent who has been appointed in accordance with §519.

2.a. Except as provided in Subparagraph 2.b of this definition, the biological or adoptive parent, when attempting to act as the parent under these regulations and when more than one party is qualified under Paragraphs 1 through 5 of this definition to act as a parent, shall be presumed to be the parent for purposes of this definition

unless the biological or adoptive parent does not have legal authority to make educational decisions for the student.

b. If a judicial decree or order identifies a specific person or persons under Paragraphs A.1 through 4 of this definition to act as the "parent" of a student or to make educational decisions on behalf of a student, then such person or persons shall be determined to be the parent for purposes of this definition, except that an employee of a public agency that provides education or care for a student may not act as the parent pursuant to §519.

Parent Counseling and Training—see *Related Services*.

Parent Training and Information Center or Community Parent Resource Center or Organization—a private nonprofit organization (other than an institution of higher education) that has a board of directors the majority of whom are parents of students with disabilities ages birth through 26, that includes individuals working in the fields of special education, related services, and early intervention; and individuals with disabilities; and the parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient students; and has as its mission serving families of students with disabilities who are ages birth through 26; and have the full range of disabilities described in section 602(3) of the IDEA.

Personally Identifiable—means information that contains:

1. the name of the student, the student's parent, or other family member;

2. the address of the student;

3. a personal identifier, such as the student's social security number or student number; or

4. a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Physical Education—see *Special Education*, Subparagraph 2.b and §108.

Physical Therapy—see *Related Services*.

Prior Notice—see §504 of these regulations.

Psychological Services—see *Related Services*.

Public Agency—includes the state, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the state that are responsible for providing education to students with disabilities.

Recreation—see *Related Services*.

Rehabilitation Counseling—see *Related Services*.

Related Services—

1. General. *Related Services*—transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

2. Exception; Services that Apply to Students with Surgically Implanted Devices, Including Cochlear Implants

a. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

b. Nothing in Subparagraph 2.a of this definition:

i. limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph A of this section) that are determined by the IEP Team to be necessary for the student to receive FAPE.

ii. limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

iii. prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §113.B.

3. Individual Related Services Terms Defined. The terms used in this definition are defined as follows:

a. *Audiology*—includes:

i. identification of students with hearing loss;

ii. determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

iii. provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;

iv. creation and administration of programs for prevention of hearing loss;

v. counseling and guidance of students, parents, and teachers regarding hearing loss; and

vi. determination of student's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

b. *Counseling Services*—services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

c. *Early Identification and Assessment of Disabilities in Students*—the implementation of a formal plan for identifying a disability as early as possible in a student's life.

d. *Interpreting Services*—include:

i. the following, when used with respect to students who are deaf or hard of hearing:

(a). oral transliteration services,

(b). cued language transliteration services,

(c). sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

ii. special interpreting services for students who are deaf-blind.

e. *Medical Services*—services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

f. *Occupational Therapy*—services provided by a qualified occupational therapist; and

i. includes:

(a). improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(b). improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(c). preventing, through early intervention, initial or further impairment or loss of function.

g. *Orientation and Mobility Services*—services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

i. includes teaching students the following, as appropriate:

(a). spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(b). to use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(c). to understand and use remaining vision and distance low vision aids; and

(d). other concepts, techniques, and tools.

h. *Parent Counseling and Training*—

i. assisting parents in understanding the special needs of their child;

ii. providing parents with information about child development; and

iii. helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

i. *Physical Therapy*—services provided by a qualified physical therapist.

j. *Psychological Services*—include:

i. administering psychological and educational tests, and other assessment procedures;

ii. interpreting assessment results;

iii. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

iv. consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

v. planning and managing a program of psychological services, including psychological counseling for students and parents; and

vi. assisting in developing positive behavioral intervention strategies.

k. *Recreation*—includes:

i. assessment of leisure function;

ii. therapeutic recreation services;

iii. recreation programs in schools and community agencies; and

iv. leisure education.

l. *Rehabilitation Counseling Services*—services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

m. *School Health Services and School Nurse Services*—health services that are designed to enable a student with a disability to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

n. *Social Work Services in Schools*—include:

i. preparing a social or developmental history on a student with a disability;

ii. group and individual counseling with the student and family;

iii. working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

iv. mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

v. assisting in developing positive behavioral intervention strategies.

o. Speech-language pathology services include:

i. identification of students with speech or language impairments;

ii. diagnosis and appraisal of specific speech or language impairments;

iii. referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

iv. provision of speech and language services for the habilitation or prevention of communicative impairments; and

v. counseling and guidance of parents, students, and teachers regarding speech and language impairments.

p. Transportation—includes:

i. travel to and from school and between schools;

ii. travel in and around school buildings; and

iii. specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.

Recreation—see *Related Services*.

Response to Intervention—see §308.

School Building Level Committee—see *Bulletin 741—The School Administrator's Handbook*.

School Day—see *Day.*

School Health Services—see *Related Services*.

Scientifically Based Research—research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that:

1. employs systematic, empirical methods that draw on observation or experiment;

2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Secondary School—a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

Secretary—the U. S. Secretary of Education.

Serious Bodily Injury—see §530.I of these regulations.

Services Plan—a written statement that describes the special education and related services the LEA will provide to a parentally-placed student with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with §132, and is developed and implemented in accordance with §§137 through 139.

Social Work Services in Schools—see *Related Services*.

Specially Designed Instruction—see *Special Education*.

Special Education—

1. General

a. *Special Education*—specially designed instruction, at no cost to the parent, to meet the unique needs of the student with a disability, including:

i. instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

ii. instruction in physical education.

b. Special education includes each of the following, if the services otherwise meet the requirements of Paragraph 1 of this Subsection:

i. speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

ii. travel training; and

iii. vocational education

2. Individual Special Education Terms Defined. The terms in this definition are defined as follows.

a. *At No Cost*—that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to non-disabled students or their parents as a part of the regular education program.

b. *Physical Education*—

i. the development of:

(a). physical and motor fitness;

(b). fundamental motor skills and patterns; and

(c). skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

ii. includes special physical education, adapted physical education, movement education, and motor development.

c. *Specially Designed Instruction*—adapting, as appropriate to the needs of an eligible student under these regulations, the content, methodology, or delivery of instruction:

i. to address the unique needs of the student that result from the student's disability; and

ii. to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

d. *Travel Training*—providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to:

i. develop an awareness of the environment in which they live; and

ii. learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

e. Vocational education-organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

Specific Learning Disability—see *Student with a Disability.*

Speech or Language Impairment—see *Student with a Disability.*

Speech or Language Pathology—see *Related Services*.

State—the state of Louisiana.

State Educational Agency or the *SEA*—the Louisiana Department of Education (LDE), governed by the State Board of Elementary and Secondary Education, both of which are responsible for the state supervision of public elementary and secondary schools.

Student with a Disability—

1. General.

a. *Student with a Disability*—a student evaluated in accordance with §§305 through 312 of these regulations and determined as having a mental disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in these regulation as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

b.i. Subject to Clause 1.b.ii of this definition, if it is determined, through an appropriate evaluation under §§305

through 308, that a student has one of the disabilities identified in Subparagraph 1.a of this definition, but only needs a related service and not special education, the student is not a student with a disability under these regulations.

(a). If, consistent with Subparagraph 1.b in the definition of *special education* in this section, the related service required by the student is considered special education rather than a related service under state standards, the student would be determined to be a student with a disability under Subparagraph 1.a of this definition.

2. Students aged three through eight experiencing developmental delays. Student with a disability for students aged three through eight, may, subject to the conditions described in §111.B, include a student:

a. who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

b. who, by reason thereof, needs special education and related services.

3. Definitions of *Disability Terms*. The terms used in this definition of a student with a disability are defined as follows:

a.i. *Autism*—a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

ii. Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance, as defined in Subparagraph 3.d of this definition.

iii. A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in Clause 3.a.i of this definition are satisfied.

b. *Deaf-Blindness*—concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

c. *Deafness*—a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a student's educational performance.

d.i. *Emotional Disturbance*—a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(a). an inability to learn that cannot be explained by intellectual, sensory, or health factors;

(b). an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(c). inappropriate types of behavior or feelings under normal circumstances;

(d). a general pervasive mood of unhappiness or depression; and/or

(e). a tendency to develop physical symptoms or fears associated with personal or school problems.

ii. Emotional disturbance includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under Clause 3.d.i of this definition.

e. *Hearing Impairment*—an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of *deafness* in Paragraph 1.c above.

f. *Mental Disability*—significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

g. *Multiple Disabilities*—concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term *multiple disabilities* does not include deaf-blindness.

h. *Orthopedic Impairment*—a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

i. *Other Health Impairment*—having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

i. is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome; and

ii. adversely affects a student's educational performance.

j. *Specific Learning Disability*—

i. General. *Specific Learning Disability*—a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

ii. Disorders not Included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

k. *Speech or Language Impairment*—a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

l. *Traumatic Brain Injury*—an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's

educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

m. *Visual Impairment Including Blindness*—an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

Supplementary Aids and Services—aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with non-disabled students to the maximum extent appropriate in accordance with §§114 through 116.

Surrogate Parent—see *Parent* and §519 of these regulations.

Transition Services—

1. a coordinated set of activities for a student with a disability that:

a. is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including post secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

b. is based upon the individual student's needs, taking into account the student's strengths, preferences and interests and includes:

i. instruction;

ii. related services;

iii. community experiences;

iv. the development of employment and other post-school adult living objectives; and

v. if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

2. Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

Transportation—see *Related Services*.

Traumatic Brain Injury—see *Student with a Disability*.

Travel Training—see *Special Education*.

Universal Design—the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

Visual Impairment Including Blindness—see *Student with a Disability*.

Vocational Education—see *Special Education*.

Ward of the State—

1. General. Subject to Paragraph 1 of this Subsection, *Ward of the State* means a student who is:

a. a foster child;

b. a ward of the state; or

c. in the custody of a public child welfare agency.

2. Exception. *Ward of the state* does not include a foster child who has a foster parent who meets the definition of *parent* in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

Chapter 10. State Program Rules for Special Education

§1001. Pupil/Teacher, Pupil/Speech/Language Pathologist, and Pupil Appraisal Ratios for Public Education

A. In providing services to all identified students with disabilities, the number of students in each instructional setting shall not exceed the following numbers.

1. Self-Contained Classrooms

Self-Contained Classrooms	Preschool	Elementary	Secondary
Autism	4	4	4
Blindness	7	9	9
Deafness	7	9	9
Deaf-blindness	4	4	4
Emotional Disturbance		8	8
Hard of Hearing	11	15	17
Mental Disability			
Mild		16	16
Moderate		11	17
Severe		9	9
Profound		9	9
Mild/Moderate (Generic)		16	16
Multiple Disabilities	7	9	9
Noncategorical Preschool			
Mild/Moderate Functioning			
Full Day	11		
Half Day	16		
Severe/Profound Functioning			
Full Day	7		
Half Day	14		
Other Health Impairment		17	17
Orthopedic Impairment	7	11	13
Partial Seeing	11	15	17
Speech or Language Impairment	7	9	9
Severe/Profound (Generic)		9	9
Specific Learning Disability		13	13
Traumatic Brain Injury	7	9	9

2. Paraeducator Training Units

a. Preschool-Aged Students: One teacher and two paraeducators shall be appointed for the initial six preschool students. For students functioning within the severe/profound range, there shall be one additional paraeducator for any additional group of three, not to exceed two additional groups of such students. For students functioning within the mild/moderate range, the additional paraeducators shall be added for each additional group of four. The maximum number of students shall not exceed twelve per unit.

b. School-Aged Students: One teacher and two paraeducators shall be appointed for the initial six students

with severe/profound or low incidence disabilities. There shall be one additional paraeducator for any additional group of three, not to exceed four additional groups of such students. The maximum number of students shall not exceed eighteen per unit.

3.a. Resource Rooms (Generic or Categorical) and Itinerant Instruction Programs (per teacher)

i. Students with severe or low incidence impairments/disabilities—10

ii. All other students with disabilities—27

b. Because of the travel requirements of the program, this number may be reduced by the LEA to 10-19 when instruction is provided to "all other students with disabilities" in at least two different schools.

4. Combination Self-contained and Resource Classrooms

a. Students with severe/low incidence impairments/disabilities—12

b. All other students with disabilities—20

5. Hospital/Homebound Instruction (per teacher)

a. Itinerant—10

b. One Site—17

6. Preschool Intervention Settings (Parent/Child Training)

a. Intervention in the Home—15

b. Intervention in a School or Center—19

7. Reserved.

8. Adapted Physical Education Instruction (per teacher)—60

a. In caseloads exceeding thirty-five students, the total number of students identified as having a severe motor deficit shall not exceed seventeen.

b. Itinerant Instruction (Two or more schools)—40

9. Instruction in Regular Classes. This ratio refers to the caseload of special education teachers who provide instruction to students with disabilities in general education settings.

a. Students with severe or low incidence impairments/disabilities—9

b. All other students with disabilities—16

10. Self-contained or Resource Departmentalized Settings

Self-Contained or Resource Departmentalized Settings	Elementary	Secondary
Autism	15	15
Blindness	33	33
Deafness	33	33
Deaf-blind	15	15
Emotional Disturbance	30	30
Hard of Hearing	58	63
Mental Disability		
Mild	63	63
Moderate	43	63
Severe	33	33
Profound	33	33
Mild/Moderate Generic	58	58
Multiple Disabilities	33	33
Other Health Impairment	63	63
Orthopedic Impairment	43	45
Partial Seeing	58	63
Severe/Profound Generic	33	33
Specific Learning Disability	50	58
Traumatic Brain Injury	33	33

11. Paraeducators may be hired to meet the unique needs of students with disabilities.

12. Speech/language pathologists in LEAs shall be employed at the rate of one for each thirty (or major fraction thereof) students receiving speech therapy. In determining the number of pupils, the following criteria shall be used.

a. Each student shall receive speech therapy.

b. Each speech/language pathologist shall be assigned a minimum of one student in speech therapy and shall not be assigned more than 79 points.

c. Each hour per week of pupil appraisal assessment services, supervision of speech/language pathologists who hold restricted license, or supervision of speech pathology assistants shall equal one point for the purpose of determining the caseload. Assignment of these activities shall be made by the LEA supervisor.

d. The caseload shall be determined according to the following guidelines.

Service Type	Number of Points Determining Caseload
Each hour of assessment	1
Each hour of supervision	1
Each hour of consultation	1
Each student receiving speech therapy	1

13. Pupil appraisal members shall be employed by LEAs at the rate listed below. LEAs may substitute one pupil appraisal for another provided that all pupil appraisal services are provided in accordance with these regulations.

	Public School Ratios Based on Membership	Private School Ratios Based on Membership
Educational Diagnosticians	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
School Psychologists	1:2,400 or major fraction thereof	1:3,500 or major fraction thereof
Social Workers	1:3,200 or major function thereof	1:4,500 or major function thereof

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:

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, 2008, 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 1706—Regulations for Implementation of the Children with Exceptionalities Act

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

The proposed rule formally realigns the state special education regulations to conform to the reauthorization of IDEA (Individuals with Disabilities Education Act) and provides Louisiana educators and education administrators with current policies and procedures related to the provision of special education services for students with disabilities. The only costs associated with this rule change is the preparation and printing of the document. The cost is projected to be approximately $2,000. Publication can be accomplished via the department's web site.

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

There will be no 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 are no costs or economic benefits to non-governmental groups affected by this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment

Beth Scioneaux	H. Gordon Monk
Deputy Superintendent	Legislative Fiscal Officer
0806#004	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators
High School Graduation Requirements
(LAC 28:LXXIX.2109, 2313, 2323, 2329, and 2331)

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 *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2109. High School Graduation Requirements; §2313. English; §2323. Mathematics; §2329. Science; and §2331. Social Studies. The revisions will align the graduation requirements with the new requirements approved for public school students and will align the nonpublic school requirements with the entrance requirements for colleges and universities. The revisions add a fourth math requirement for all nonpublic school students beginning with the freshmen class of 2009-2010. It also provides two pathways for students to follow in meeting the graduation requirements, the LA Core 4 curriculum and the Basic Core curriculum. The policy change also adds the following courses to the Programs of Study: Senior Applications in English, Math Essentials, Anatomy and Physiology, and African American Studies.

Title 28
EDUCATION
Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators
Chapter 21. Curriculum and Instruction
Subchapter C. Secondary Schools
§2109. High School Graduation Requirements

A. For incoming freshmen prior to 2009-2010, students shall complete a minimum of 23 Carnegie units of credit in an individual program which shall be cooperatively planned by the student, the student's parents, and the school to meet high school graduation requirements.

B. For incoming freshmen prior to 2009-2010, the 23 units required for graduation shall include 15 required units and 8 elective units. For incoming freshmen in 2009-2010 and beyond, the 24 units required for graduation shall include 16 required units and 8 elective units for the Louisiana Core Curriculum, or 21 required units and 3 elective units for the Louisiana Core 4 Curriculum.

C. Minimum Requirements (Effective for Incoming Freshmen 1999-2000 to 2008-2009.)

1. English—4 units, shall be English I, II, and III, and English IV or Business English.

2. Mathematics—3 units.

a. Effective for incoming freshmen 2005-2006 and beyond, all students must:

i. complete one of the following:

(a). Algebra I (1 unit); or

(b). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or

(c). Integrated Mathematics I (1 unit);

ii. the remaining unit(s) shall come from the following:

(a). Integrated Mathematics II;
(b). Integrated Mathematics III;
(c). Geometry;
(d). Algebra II;
(e). Financial Mathematics;
(f). Advanced Mathematics I;
(g). Advanced Mathematics II;
(h). Pre-Calculus;
(i). Calculus;
(j). Probability and Statistics;
(k). Discrete Mathematics.

b. For incoming freshmen between 1998 and 2004-2005, the three required mathematics units shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra 1-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics 1 (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced

Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

3. Science—3 units, shall be the following:

a. 1 unit of Biology;

b. 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I, Physics of Technology I;

c. 1 unit from the following courses: Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, an additional course from the physical science cluster, or a locally initiated science elective;

d. Students may not take both Integrated Science and Physical Science;

e. Agriscience I is a prerequisite for Agriscience II and is an elective course.

4. Social Studies—3 units, shall be American History; one-half unit of Civics, one-half unit of Free Enterprise or one full unit of Civics or AP American Government; and one of the following: World History, World Geography, Western Civilization, or AP European History.

5. Health and Physical Education—2 units, shall be Health and Physical Education I and Health and Physical Education II, or Adapted Physical Education for eligible special education students.

NOTE: The substitution of JROTC is permissible. A maximum of four units may be used toward graduation.

6. Electives (Including a maximum of four credits in religion)—8 units.

7. Total—23 units.

D. Beginning with incoming freshmen in 2009-2010, all ninth graders will be enrolled in the Louisiana Core 4 Curriculum.

1. After the student has attended high school for a minimum of two years, as determined by the school, the student, the student's parent, guardian, or custodian may request that the student be exempt from completing the Louisiana Core 4 Curriculum.

2. The following conditions shall be satisfied for consideration of the exemption of a student from completing the Louisiana Core 4 Curriculum.

a. The student, the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection) shall meet to discuss the student's progress and determine what is in the student's best interest for the continuation of his educational pursuit and future educational plan.

b. During the meeting, the student's parent, guardian, or custodian shall determine whether the student will achieve greater educational benefits by continuing the Louisiana Core 4 Curriculum or completing the Louisiana Core Curriculum.

c. The student's parent, guardian, or custodian shall sign and file with the school a written statement asserting their consent to the student graduating without completing the Louisiana Core 4 Curriculum and acknowledging that one consequence of not completing the Louisiana Core 4 Curriculum may be ineligibility to enroll in into a Louisiana four-year public college or university. The statement will then be approved upon the signature of the principal or the principal's designee.

3. The student in the Louisiana Core Curriculum may return to the Louisiana Core 4 Curriculum, in consultation with the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection).

4. After a student who is 18 years of age or older has attended high school for two years, as determined by the school, the student may request to be exempt from completing the Louisiana Core 4 Curriculum by satisfying the conditions cited in Subparagraph 2.c with the exception of the requirement for the participation of the parent, guardian, or custodian, given that the parent/guardian has been notified.

E. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following.

1. English—4 units, shall be English I, II, III, and IV

2. Mathematics—4 units, shall be:

a. Algebra I (1 unit) or Algebra I-Pt. 2;

b. Geometry;

c. Algebra II;

d. the remaining unit shall come from the following: Financial Mathematics, Senior Applications in Math, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally-initiated elective approved by BESE as a math substitute.

3. Science—4 units, shall be:

a. Biology;

b. Chemistry;

c. two units from the following courses: Physical Science, Integrated Science, Physics I, Physics of Technology I, Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, Anatomy and Physiology, or a locally initiated elective approved by BESE as a science substitute.

i. Students may not take both Integrated Science and Physical Science

ii. Agriscience I is a prerequisite for Agriscience II and is an elective course.

4. Social Studies—4 units, shall be:

a. 1 unit of Civics or AP American Government, or 1/2 unit of Civics or AP American Government and 1/2 unit of Free Enterprise;

b. 1 unit of American History;

c. 1 unit from the following: World History, World Geography, Western Civilization, or AP European History;

d. 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Law Studies, Psychology, Sociology, African American Studies, or Religion I, II, III, or IV.

5. Health and Physical Education—2 units.

6. Foreign Language—2 units, shall be 2 units from the same foreign language or 2 speech courses.

7. Arts—1 unit, shall be Fine Arts Survey or one unit of Art, Dance, Music, or Theatre.

8. Electives—3 units.

9. Total—24 units.

F. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core Curriculum, the

minimum course requirements for graduation shall be the following.

1. English—4 units, shall be English I, II, III, and IV or Senior Applications in English

2. Mathematics—4 units, shall be:

a. Algebra I (1 unit) or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units);

b. Geometry;

c. the remaining units shall come from the following: Algebra II, Financial Mathematics, Senior Applications in Math, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally initiated elective approved by BESE as a math substitute.

3. Science—3 units, shall be:

a. Biology;

b. 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I, Physics of Technology I;

c. 1 unit from the following courses: Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, Anatomy and Physiology, an additional course from the physical science cluster, or a locally initiated elective approved by BESE as a science substitute.

i. Students may not take both Integrated Science and Physical Science.

ii. Agriscience I is a prerequisite for Agriscience II and is an elective course.

4. Social Studies—3 units, shall be:

a. 1 unit of Civics and/or AP American Government, or 1/2 unit of Civics or AP American Government and 1/2 unit of Free Enterprise;

b. 1 unit of American History;

c. 1 unit from the following: World History, World Geography, Western Civilization, or AP European History.

5. Health and Physical Education—2 units.

6. Electives—8 units.

7. Total—24 units.

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 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:

§2313. English

A. Four units of English shall be required for graduation. They shall be English I, II, and III, in consecutive order, and English IV, or Business English (for incoming freshmen prior to 2009-2010), or Senior Applications in English.

B. The English course offerings shall be as follows.

Course Title(s)	Units
English I, II, III, and IV	1 each
Business English (for incoming freshmen prior to 2008-2009)	1
Senior Applications in English	1
Reading I	1
Reading II	1
English as a Second Language (ESL) I, II, III, and IV	1 each

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 29:2353 (November 2003), amended LR 31:3085 (December 2005).

§2323. Mathematics

A. Effective for 2009-2010 incoming freshmen, four units of mathematics shall be required for graduations. All students must complete the following.

1. Algebra I (1 unit) or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units)

2. Geometry

3. The remaining units shall come from the following: Algebra II, Financial Mathematics, Senior Applications in Math, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally-initiated elective approved by BESE as a math substitute.

B. Three units of mathematics are required for graduation. Effective for incoming freshmen between 2005-2006 and 2008-2009, all students must:

1. complete one of the following:

a. Algebra I (1 unit); or

b. Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or

c. Integrated Mathematics I (1 unit);

2. the remaining unit(s) shall come from the following:

a. Integrated Mathematics II;

b. Integrated Mathematics III;

c. Geometry;

d. Algebra II;

e. Financial Mathematics;

f. Advanced Mathematics I;

g. Advanced Mathematics II;

h. Pre-Calculus;

i. Calculus;

j. Probability and Statistics;

k. Discrete Mathematics.

C. For incoming freshmen between 1998 and 2004-2005, the three required mathematics units shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra 1-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics 1 (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics.

Course Title	Unit(s)
Advanced Mathematics I	1
Advanced Mathematics II	1
Algebra I	1
Algebra I-Part I	1
Algebra 1-Part II	1
Algebra II	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I	1

Course Title	Unit(s)
Integrated Mathematics II	1
Integrated Mathematics III	1
Pre-Calculus	1
Probability and Statistics	1
Senior Applications in Math	1

D. Financial Mathematics may be taught by the Business Education Department.

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 29:2354 (November 2003), amended LR 30:2776 (December 2004), LR 31:3086 (December 2005), LR 34:

§2329. Science

A. Effective for incoming freshmen 2002-2003 and thereafter, the science graduation requirements shall be as follows:

1. 1 unit of Biology;
2. 1 unit from the following physical science cluster:
   a. Physical Science;
   b. Integrated Science;
   c. Chemistry I;
   d. Physics I;
   e. Physics of Technology I;
3. 1 unit from the following courses:
   a. Aerospace Science;
   b. Biology II;
   c. Chemistry II;
   d. Earth Science;
   e. Environmental Science;
   f. Physics II;
   g. Physics of Technology II;
   h. Agriscience II (See Subsection C below.);
   i. Anatomy and Physiology
   j. an additional course from the physical science cluster; or
   k. a locally initiated science elective.

B. Students may not take both Integrated Science and Physical Science.

C. Agriscience I is a prerequisite for Agriscience II and is an elective course.

D. The Science course offerings shall be as follows.

Course Title	Unit(s)
Aerospace Science	1
Agriscience II	1
Anatomy and Physiology	1
Biology I, II	1 each
Chemistry I, II	1 each
Earth Science	1
Environmental Science	1
Integrated Science	1
Physical Science	1
Physics I, II	1 each
Physics for Technology I, II	1 each

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 29:2355 (November 2003), amended LR 31:3087 (December 2005), LR 34:

§2331. Social Studies

A. Three units of Social Studies shall be required for graduation. They shall be (a) American History; (b) one unit of Civics, and/or AP American Government, or 1/2 unit of Civics or AP American Government and 1/2 unit of Free Enterprise; and (c) one of the following: World History, World Geography, Western Civilization, or AP European History. Social Studies course offerings shall be as follows.

Course Title	Unit(s)
African American Studies	1
American Government	1
American History	1
Civics	1 (or 1/2)
Economics	1
Free Enterprise System	1/2
Law Studies	1
Psychology	1
Sociology	1
Western Civilization	1
World Geography	1
World History	1
AP European History	1

B. Economics may be taught by a teacher qualified in Business Education.

C. Free Enterprise shall be taught by teachers qualified in Social Studies, Business Education, or Distributive Education.

D. One unit of religion (§2367) may be used as the fourth social studies course required for the Louisiana Core 4 curriculum.

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 29:2356 (November 2003), amended LR 31:3088 (December 2005), LR 34:

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, 2008, 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: Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—High School Graduation Requirements

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

The implementation of changes requires no cost or savings to state or local governmental units. The revision to 2109, 2313, 2323, 2329, and 2331 in Bulletin 741: Louisiana Handbook for Nonpublic School Administrators will align the graduation requirements with the new requirements approved for public school students and will align the nonpublic school requirements with the entrance requirements for colleges and universities. The revisions add a fourth math requirement for all nonpublic school students beginning with the freshmen class of 2009-2010. It also provides two pathways for students to follow in meeting the graduation requirements, the LA Core 4 curriculum and the Basic Core curriculum. The policy change also adds the following courses to the Programs of Study: Senior Applications in English, Math Essentials, Anatomy and Physiology, and African American Studies.

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	H. Gordon Monk
Deputy Superintendent	Staff Director
Management and Finance	Legislative Fiscal Office

0806#045

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

DMR Submittal (LAC 33:IX.2701)(WQ074)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2701 (Log #WQ074).

The proposed rule will ensure that permittees have the option to submit discharge monitoring reports (DMRs) electronically through an electronic document receiving system, as well as the current option of submitting them on paper. With the impending migration to EPA's new database, the Integrated Compliance Information System (ICIS), an increase in workload is a reality. Once migration is complete, all DMRs will have to be entered into the database. With this increase in workload, the need for a more efficient way to submit DMRs is required. The electronic submittal of DMRs is a way to effectively manage this increase in workload. The basis and rationale for this rule are to provide adequate resources to continue to meet regulatory requirements. 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.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program
Chapter 27. LPDES Permit Conditions
§2701. Conditions Applicable to All Permits

The following conditions apply to all LPDES permits. Additional conditions applicable to LPDES permits are in LAC 33:IX.2703. All conditions applicable to LPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved state regulations) must be given in the permit.

A. – L.3....

4. Monitoring Reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit and shall be submitted in paper format or through a department-approved electronic document receiving system in accordance with [citation LAC 33:I.Chapter 21 to be inserted upon promulgation].

L.4.a. – N.4. ...

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 23:724 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2553 (November 2000), LR 28:468 (March 2002), repromulgated LR 30:230 (February 2004), amended LR 30:1676 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431, 2512 (October 2005), LR 32:1220 (July 2006), LR 33:2168 (October 2007), LR 34:

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

A public hearing will be held on July 29, 2008, 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. Two hours of free parking are allowed in the Galvez Garage 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 WQ074. Such comments must be received no later than August 5, 2008, 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 WQ074. 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: DMR Submittal

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

The electronic submittal of discharge monitoring reports (DMRs) to the department that is provided for in this proposed rule will be voluntary. Once the program is in place and operational it will allow an alternative for submittal of DMRs that will reduce the handling of paperwork and ultimately decrease staff workload. This proposed rule will allow local governmental staff to submit DMRs electronically, which will decrease their expenditures for postage and document preparation and handling.

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

There will be no change in revenue collections for state or local governments.

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

The electronic submittal of discharge monitoring reports (DMRs) to the department that is provided for in this proposed rule will be voluntary, but those in the regulated community who choose to use the process could see savings as a result of the proposed action. Paperwork and document preparation costs are greatly reduced when submitting DMRs electronically.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Herman Robinson, CPM
Executive Counsel
0806#013

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Environmental Quality
(LAC 33:I.107, 502, 603, 905, 1302, 1407, 2003, 2503, 3703; III.504, 605, 2132, 2133, 2135, 2137, 2143, 2145, 2301, 5151; V.105, 109, 519, 529, 1529, 1709, 1711, 1741, 1907, 2230, 2246, 2247, 2306, 2311, 2503, 2508, 2906, 3025, 3105, 3111, 4003, 4357, 4367, 4437, 4459, 4545; VI.911; VII.711, 721; IX.301, 1123; XI.1139; and XV.609)
(MM008)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Environmental Quality regulations, LAC 33:I.107, 502, 603, 905, 1302, 1407, 2003, 2503, 3703; III.504, 605, 2132, 2133, 2135, 2137, 2143, 2145, 2301, 5151; V.105, 109, 519, 529, 1529, 1709, 1711, 1741, 1907, 2230, 2246, 2247, 2306, 2311, 2503, 2508, 2906, 3025, 3105, 3111, 4003, 4357, 4367, 4437, 4459, 4545; VI.911; VII.711, 721; IX.301, 1123; XI.1139; and XV.609 (Log #MM008).

This rule makes changes that were overlooked in a previous rulemaking, changing references to DEQ divisions in the regulations to references to the statutory office designations and updating some office designations to reflect the current organizational structure of the department. Miscellaneous typographical, grammatical, punctuation, and outline numbering corrections are made throughout the regulations. Outdated citations are corrected, and citation formatting is updated for consistency in the regulations. An introductory paragraph is added to several definition sections to clarify where the definitions that are presented in each corresponding section apply. This rule also corrects a mistake in a previous rule, WQ054, Water Quality Standards Triennial Revision; two changes left out of that rule are now being made. Other minor changes are made to the Air and Solid Waste regulations to clarify their meaning. The Environmental Quality Act requires the department to promulgate environmental regulations. Maintenance of these regulations is part of that responsibility. The basis and rationale for this rule are to maintain the regulations that protect the environment and public health of the state, as authorized by the Environmental Quality Act. 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.

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures
Chapter 1. Public Notification of Contamination
§107. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise

requires, or unless specifically redefined in a particular Section.

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

Applicable Federal or State Health and Safety Standard—those health and/or safety standards promulgated under federal or state health or safety laws or other universally accepted health or safety standards that the department, based on its knowledge and expertise, reasonably determines are applicable to a particular release and release site. Examples of *applicable federal or state health and safety standards* include, but are not limited to:

a. USEPA maximum contaminant level (MCL) in a drinking water well or aquifer. MCLs are not applicable for non-potable groundwater or surface water;

b. Louisiana primary ambient air quality standards (LAC 33:III.Chapter 7); and

c. Agency for Toxic Substances and Disease Registry (ATSDR) minimal risk levels (MRLs) for air.

Corrective Action—activities conducted to protect human health and the environment.

Department—the Department of Environmental Quality.

Off-Site—areas beyond the property boundary of the release site.

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

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

Release Site—area within the property boundary of the site where the release has occurred.

Responsible Party—any person required by law or regulation to undertake corrective action at a site.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:2039 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 5. Confidential Information Regulations

§502. Definitions

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

Air Emission Data—any information necessary or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of any emission or discharge that has been emitted or discharged by a source; or any information necessary or used to determine or calculate the identity, amount, frequency, concentration, or other characteristic of an emission that, under an applicable standard or limitation, a source was authorized to emit or discharge, including, to the extent necessary to identify the source and to distinguish it from other sources, a description of the device, installation, or operation constituting the source. This includes the calculation of an "allowable" emission limit for a permit.

Complete—in reference to a request for confidentiality of information or records, the request contains everything necessary for a determination to be made. Designating a request complete does not preclude the department from requesting or accepting an amended request.

Financial Request—a single character request that contains financial information or records only. This includes, but is not limited to, financial accounts statements, gross revenues statements, profit and loss statements, projected revenues statements, tax returns, financial/accounting statements, and financial audit documentation/reports.

Mixed Character Record—a record submitted as part of a request for confidentiality that, in addition to information that meets the criteria for confidentiality specified by law, also contains information that either does not meet the criteria for confidentiality specified by law or is prohibited by law or regulation from being classified as confidential.

Mixed Character Request—a request for confidentiality that contains one or more mixed character records.

Single Character Request—a request for confidentiality that contains only information or records that meet the criteria for confidentiality specified by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), amended LR 30:742 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 6. Security-Sensitive Information

§603. Definitions

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

Distribution or Dissemination via the Internet—to make known to the public generally by posting to a web, FTP, database, or application server configured for anonymous public access under the direct control of the department.

Security-Sensitive Information—as defined in R.S. 44:3(A)(3), security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created, collected, or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1322 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 9. Petition for Rulemaking

§905. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise

requires, or unless specifically redefined in a particular Section.

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

Department—the Department of Environmental Quality as created by R.S. 30:2001 et seq.

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, LR 23:297 (March 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 13. Risk Evaluation/Corrective Action Program

§1302. Definitions

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

Department—the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2440 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 14. Groundwater Fees

§1407. Definitions

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

Assessment—planning, data gathering and reporting, and other activities used to generate a report that appraises groundwater contamination and draws conclusions as to the need for further assessment and/or corrective action.

Assessment Oversight—departmental review and evaluation of a facility's assessment activities.

Corrective Action Oversight—departmental review and evaluation of corrective action plans and of remedial actions undertaken to restore the quality of contaminated groundwater.

Corrective Action Plan—a plan that details a schedule of remedial actions that will restore the quality of contaminated groundwater.

Non-Regulated Facility—a facility that is not classified as a solid or hazardous waste facility but under which groundwater contamination has been detected.

Regulated Unit—a solid waste facility or a hazardous waste facility under which groundwater contamination has been detected.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Ground Water Protection Division, LR 18:729 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 20. Records of Decision for Judicial Review

§2003. Definitions

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

Record of Decision—for purposes of this Chapter, all documents, evidence, and other items presented to, and/or actually considered by, the decision maker for the purpose of influencing the decision. This shall include, but is not limited to:

a. the record of any hearing or other proceeding held in connection with the decision or action;

b. any comments, written or oral, submitted to the department in connection with the decision or action;

c. any response to such comments issued by the department;

d. all matters officially noticed by the decision maker;

e. any written statement of the decision or action and reasons therefor; and

f. for permit actions:

i. the permit application, including all supplements and amendments thereto;

ii. any notices of deficiency issued by the department;

iii. any responses to notices of deficiency;

iv. any correspondence relating to the permit application;

v. any public notices relating to the permit action; and

vi. the final permit, if granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, 2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:857 (May 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 25. Beneficial Environmental Projects

§2503. Definitions

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

Beneficial Environmental Project (BEP)—a project that provides for environmental mitigation which the defendant/respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of a settlement of a violation or penalty assessment.

Environmental Mitigation—that which tends to lead in any way to the protection from, reduction of, or general awareness of potential risks or harm to public health and the environment. Environmental mitigation includes any and all projects that conform to the requirements set forth in LAC 33:I.2505.

Not Otherwise Legally Required to Perform—the approved project is not required of the defendant/respondent by any federal, state, or local law, regulation, or permit (except that early compliance may be allowed) or actions

which the defendant/respondent may be required to perform as injunctive relief in the instant case or as part of a settlement or order in another action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), 2031, and 2050.7(E).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1603 (August 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 37. Regulatory Innovations Programs

§3703. Definitions

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

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

Demonstration Project (DP)—a project containing all the elements required in LAC 33:I.3705, intended to be implemented in exchange for regulatory flexibility.

Final Project Agreement (FPA)—the final document agreed upon between the secretary and a program participant that specifically states the terms and duration of the proposed project. The final project agreement is an enforceable document.

Regulatory Flexibility—the power of the Secretary of the Department of Environmental Quality to exempt a qualified participant in a regulatory innovations program from regulations promulgated by the department under this Chapter, consistent with federal law and regulation.

Stakeholders—citizens in the communities near the project site, facility workers, government representatives, industry representatives, environmental groups, or other public interest groups with representatives in Louisiana and Louisiana citizens, or other similar interests.

Superior Environmental Performance—

a. a significant decrease of pollution to levels lower than the levels currently being achieved by the subject facility under applicable law or regulation, where these lower levels are better than required by applicable law and regulation; or

b. improved social or economic benefits, as determined by the secretary, to the state, while achieving protection to the environment equal to the protection currently being achieved by the subject facility under applicable law and regulation, provided that all requirements under current applicable law and regulation are being achieved by the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2561 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2197 (November 1999), repromulgated LR 25:2399 (December 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. – J.15.b. …

K. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

* * *

Building, Structure, Facility, or Installation—all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., they have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

* * *

L. – M.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 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

Actual Emissions—the actual rate of emissions of an air pollutant from a source operation, equipment, or control apparatus. *Actual emissions* shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the baseline period. Acceptable methods for estimating the actual emissions may include, but are not limited to, any one or a combination of the following:

a. emission factors based on EPA's Compilation of Air Pollutant Emission Factors (AP-42) or other emission factors approved by the department, if better source specific data are not available;

b. fuel usage records, production records, purchase records, material balances, engineering calculations (approved by the department), source tests, waste disposal records, and emission reports such as emission inventory reports, SARA Title III, or MACT compliance certifications.

* * *

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 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 34:

Chapter 21. Control of Emission of Organic Compounds

Subchapter F. Gasoline Handling

§2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities

A. - B.5. …

6. The regulated facility shall submit the following application information to the Office of Environmental Assessment prior to installation of the Stage II Vapor Recovery System:

B.6.a. - C.2. …

D. Testing

1. The owner/operator of the facility shall have the installed vapor recovery equipment tested prior to the start-up of the facility. The owner or operator shall notify the Office of Environmental Assessment at least five calendar days in advance of the scheduled date of testing. Testing must be performed by a contractor that is certified with the Department of Environmental Quality. Compliance with the emission specification for Stage II equipment shall be demonstrated by passing the following required tests or equivalent for each type of system:

1.a. - 2.…

3. The department reserves the right to confirm the results of the aforementioned testing at its discretion and at any time. Within 30 days after installation or major system modification of a vapor recovery system, the owner or operator of the facility shall submit to the Office of Environmental Assessment the date of completion of the installation or major system modification of a vapor recovery system and the results of all functional testing requirements.

E. - I. …

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 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:1682 (December 1997), LR 24:25 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 29:558 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007), LR 34:

§2133. Gasoline Bulk Plants

A. - C.4. …

D. Compliance

1. Compliance with this Section shall be determined by applying the following test methods, as appropriate:

a. leak tests for monitoring during loading, EPA, Appendix B, Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA 450/2-78-51);

b. Test Method 21 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determination of volatile organic compound leaks.

2. Monitoring Requirements. Inspection for visible liquid leaks, visible fumes, or odors resulting from gasoline dispensing operations shall be conducted by the owner or the operator of the bulk plant or the owner or the operator of the tank truck. Gasoline loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

E. – E.2. …

3. data to document compliance with Subsection D of this Section;

E.4. – F. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:610 (July 1990), LR 21:552 (June 1995), LR 22:1212 (December 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 34

§2135. Bulk Gasoline Terminals

A. - B.4. …

5. A facility subject to this Section shall service only those delivery trucks/transport vessels complying with LAC 33:III.2137.

C. Exemptions

1. Gasoline distribution facilities that have a gasoline throughput less than 20,000 gallons (75,708 liters) per day averaged over any consecutive 30-day period shall meet the provisions of LAC 33:III.2133. Once a facility's throughput exceeds this rate, it shall become subject to and shall comply with this Section and shall remain so regardless of any fluctuations in throughput.

2. All loading and unloading facilities for crude oil and condensate, for ships and barges and for facilities loading and unloading only liquified petroleum gas are exempt from this Section.

3. Gasoline bulk terminals that are located in an attainment area and do not service facilities controlled by LAC 33:III.2131 and 2133 are exempt from the control requirements of Subsection B of this Section. Bulk terminals servicing exempted and controlled facilities are required to collect vapors from controlled facilities.

D. Compliance

1. Compliance with this Section shall be determined by applying the following test methods, as appropriate:

a. Test Methods 1-4 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining flow rates, as necessary;

b. Test Method 18 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for measuring gaseous organic compound emissions by gas chromatographic analysis;

c. Test Method 21 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determination of volatile organic compound leaks;

d. Test Method 25 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining total gaseous nonmethane organic emissions as carbon;

e. EPA leak tests for monitoring during loading, Appendix B, Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA 450/2-78-051); and

f. additional performance test procedures, or equivalent test methods, approved by the administrative authority*.

2 Monitoring Requirements. Inspection for visible liquid leaks, visible fumes, or odors resulting from gasoline dispensing operations shall be conducted by the owner or the operator of the terminal or the owner or the operator of the tank truck. Gasoline loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

E. - E.2. …

3. testing, sampling and analysis data to document compliance with Subsections B and D of this Section;

4. - 5.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 Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:611 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1123 (October 1992), LR 22:1212 (December 1996), LR 24:25 (January 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

§2137. Gasoline Terminal Vapor-Tight Control Procedure

A. - A.1. …

2. Inspection Sticker Required. All tank trucks must have a sticker displayed on each tank indicating the identification number of the tank and the date each tank last passed the pressure and vacuum test described in Paragraph A.1 of this Section. Each tank must be certified annually and the sticker must be displayed near the Department of Transportation certification plate. Any repairs necessary to pass the specified requirements must be made within 15 days of failure.

B. - B.3.b. …

C. Exemptions. All loading and unloading facilities for crude oil and condensate, for ships and barges and for facilities loading or unloading only liquified petroleum gas are exempt from this Section.

D. Recordkeeping Requirements. The gasoline terminal operator shall maintain records at the facility for at least two years indicating the last time the vapor collection facility passed the requirements specified in Paragraph B.1 of this Section. Items that required repair in order to pass the specified requirements must also be recorded during the annual test procedure.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:612 (July 1990), LR 22:1212 (December 1996), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Subchapter H. Graphic Arts

§2143. Graphic Arts (Printing) by Rotogravure and Flexographic Processes

A. - B. …

C. Compliance. The owner/operator of any facility subject to this Section shall install and maintain monitors to accurately measure and record operational parameters of all required control devices as necessary to ensure the proper functioning of those devices in accordance with the design specification. Compliance with this Section shall be determined by certification from the ink manufacturer concerning the solvent makeup of the ink or by applying the following test methods as appropriate:

1. - 4. …

D. Recordkeeping. The owner or operator of any graphic arts facility shall maintain records at the facility to verify compliance with or exemption from this Section. The records shall be maintained for at least two years and shall include, but not be limited to, the following:

1. records of any testing done in accordance with Subsection C of this Section;

D.2. - E. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:964 (November 1990), LR 18:1123 (October 1992), LR 22:1212 (December 1996), LR 24:25 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1796 (October 1999), LR 28:1765 (August 2002), LR 30:746 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Subchapter I. Pharmaceutical Manufacturing Facilities

§2145. Pharmaceutical Manufacturing Facilities

A. - A.1.e. …

2. if equivalent controls are used, the VOC emissions must be reduced by at least as much as they would be by using a surface condenser that meets the requirements of Paragraph A.1 of this Section.

B. – F.4. …

G. Recordkeeping. The owner or operator of a pharmaceutical manufacturing facility shall maintain the following records at the facility for at least two years:

1. the results of all tests conducted in accordance with Subsection F of this Section;

2. – 4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:964 (November 1990), LR 22:1212 (December 1996), LR 24:25 (January 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:70 (January 2008), LR 34:

Chapter 23. Control of Emissions for Specific Industries[1]

[1]Regulation of emissions of volatile organic compounds for certain industries are presented in Chapter 21.

Subchapter A. Chemical Woodpulping Industry

§2301. Control of Emissions from the Chemical Woodpulping Industry

A. - D.2.…

3. Total Reduced Sulfur Emissions

a. Emissions of Total Reduced Sulfur (TRS) from existing sources specified below shall not exceed the following limits:

i. kraft recovery furnaces corrected to 8 percent oxygen by volume:

(a). new design straight kraft recovery furnaces, 5 parts per million (ppm);

(b). old design straight kraft recovery furnaces, 20 ppm;

(c). cross-recovery furnaces, 25 ppm;

(d). recovery furnaces constructed prior to 1960: The department may establish emission limitations different from those specified above for the remaining useful life of the unit. The emissions limit established for each affected furnace will reflect the lowest levels of TRS emissions consistently achievable utilizing best practicable technology;

ii. digester systems, 5 ppm;

iii. multiple effect evaporator systems, 5 ppm;

iv. lime kilns, corrected to 10 percent oxygen by volume, 20 ppm;

v. condensate stripper systems, 5 ppm;

vi. smelt dissolving tanks, 0.016 grams per kilogram black liquor solids fired. Compliance with the particulate emission limits of Subparagraph D.1.b of this Section by a scrubbing device employing fresh water as the scrubbing medium make up will be accepted as evidence of adequate TRS control on smelt dissolving tanks. Emission limits are given in terms of 12-hour averages. For recovery furnaces, 1 percent, and for lime kilns, 2 percent of all 12-hour TRS averages per quarter year above the specified level, under conditions of proper operation and maintenance, in the absence of start-ups, shutdowns and malfunctions, are not considered to be violations of the emission limitation. These are not running averages, but are instead for discrete contiguous 12-hour periods of time;

vii. in any facility with multiple sources subject to this Subchapter, alternative TRS emission limits from individual sources shall be established upon request, using the "Bubble Concept," provided that the total emissions from all the regulated sources do not exceed those permitted above;

viii. the department may establish alternative limits consistent with the purposes of this Section.

b Compliance. Affected sources shall achieve final compliance with the provisions of this Paragraph as expeditiously as practicable but not more than six years from the effective date of this Subchapter of the regulations.

4. Opacity Limitation

a. The emission of smoke from the recovery furnace shall be controlled so that the shade or appearance of the emission is not darker than 40 percent average opacity as to obscure vision to a degree equivalent to the above (see LAC 33:III.1503.D, Table 4) except that emitted may have an average opacity in excess of 40 percent for not more than one six-minute period in any 60 consecutive minutes.

b. Compliance. Owner or operators shall conduct source tests of recovery furnaces pursuant to the provisions in LAC 33:III.1503.D, Table 4, to confirm particulate emissions are less than that specified in Paragraph D.1 of this Section. The results shall be submitted to the Office of Environmental Assessment as specified in LAC 33:III.919 and 918. The testing should be conducted as follows:

i. four tests at six month intervals within 24 months of promulgation of this regulation; and

ii. one test annually thereafter.

E. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1564 (December 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2454 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 32:1841 (October 2006), LR 33:2088 (October 2007), LR 34:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter M. Asbestos

§5151. Emission Standard for Asbestos

A. – F.2.c.iv.(a).(ii). …

(b). when the asbestos stripping or removal operation or demolition operation covered by this Subsection will begin on a date earlier than the original start date:

(i). provide the Office of Environmental Services with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins;

(ii). for demolitions covered by Subparagraph F.1.b of this Section, provide the Office of Environmental Services written notice of a new start date at least 10 working days before commencement of demolition. Delivery of the updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable;

F.2.c.iv.(c). – P.2.b. …

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 17:1204 (December 1991), repealed and repromulgated LR 18:1121 (October 1992), amended LR 20:1277 (November 1994), LR 24:27 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2462 (November 2000), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 30:2022 (September 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 33:2095 (October 2007), LR 34:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

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

A. – D.2.k.…

l. injected groundwater that is hazardous only because it exhibits the toxicity characteristic (Hazardous Waste Codes D018-D043 only) in LAC 33:V.4903.E and that is re-injected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993.

This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, arketing terminals, and bulk plants, until January 1, 1993. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:

D.2.l.i. – P.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:0000 (June 2008), LR 34:

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Corrosive Waste—a waste subject to these regulations pursuant to provisions of LAC 33:V.4903.C which, because of such properties as acidity or alkalinity, would tend to weaken or erode a common construction material.

* * *

Ignitable Waste—a waste subject to these regulations pursuant to provisions of LAC 33:V.4903.B of such properties as to constitute a potential fire hazard during its management.

* * *

Reactive Waste—a waste subject to these regulations pursuant to provisions of LAC 33:V.4903.D which is normally unstable or which may endanger life or property in the presence of other substances likely to be encountered in the management of waste.

* * *

Toxic Waste—a waste subject to these regulations pursuant to provisions of LAC 33:V.4903.E which, by its chemical properties, has the potential to endanger human health or other living organisms by means of acute or chronic adverse effects, including poisoning, mutagenic, teratogenic, or carcinogenic effects.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:0000 (June 2008), LR 34:

Chapter 5. Permit Application Contents

Subchapter E. Specific Information Requirements

§519. Contents of Part II: General Requirements

A. Part II of the permit application consists of the general information requirements of this Section, and the specific information requirements in LAC 33:V:519, 520, 521, 523, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, and 706 applicable to the facility. The Part II information requirements presented in LAC 33:V:519, 520, 521, 523, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, and 706 reflect the standards promulgated in LAC 33:V.Chapters 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 37. These information requirements are necessary in order for the administrative authority to determine compliance with LAC 33:V.Chapters 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, and 37. If owners and operators of Hazardous Waste Management facilities can demonstrate that the information prescribed in Part II cannot be provided to the extent required, the administrative authority may make allowance for submission of such information on a case-by-case basis. Information required in Part II shall be submitted to the administrative authority and signed in accordance with requirements in Subchapter B of this Chapter. Certain technical data, such as design drawings and specifications and engineering studies, shall be certified by a Louisiana registered professional engineer. For post-closure permits,

only the information specified in LAC 33:V.528 is required in Part II of the permit application.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1465 (August 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:0000 (June 2008), LR 34:

§529. Specific Part II Information Requirements for Incinerators

Except as LAC 33:V.Chapter 31 and Subsection F of this Section provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of Subsection A, B, or C of this Section:

A. – A.1. …

2. documentation that the waste is listed as a hazardous waste in LAC 33:V.Chapter 49, solely because it is reactive (Hazard Code R) for characteristics other than those listed in LAC 33:V.4903.D.4 and 5, and will not be burned when other hazardous wastes are present in the combustion zone; or

3. …

4. documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in LAC 33:V.4903.D.1, 2, 3, 6, 7, or 8, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

B. – F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(24)(a) and 2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 22:817 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:2199 (November 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:319 (March 2003), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:620 (April 2008), LR 34:0000 (June 2008), LR 34:

Chapter 15. Treatment, Storage, and Disposal Facilities

§1529. Operating Record and Reporting Requirements

A. – B.11. …

12. records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal prohibition granted in accordance with LAC 33:V.2239, a petition approved in accordance with LAC 33:V.2241 or 2271, a determination made under LAC 33:V.2273, or the applicable notice required by a generator under LAC 33:V.2245. This information must be maintained in the operating record until the closure of the facility;

13. for an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator under LAC 33:V.2245 or 2247;

14. for an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required of the generator or the owner or operator under LAC 33:V.2245 or 2247;

15. for an off-site land disposal facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator of a treatment facility under LAC 33:V.2245 or 2247, whichever is applicable;

16. for an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under LAC 33:V.2245 or LAC 33:V.2247, except for the manifest number;

17. for an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required of the generator or the owner or operator under LAC 33:V.2245 or 2247;

18. for an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required of the generator or the owner or operator under LAC 33:V.2245 or 2247;

B.19. – E.3. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:278 (February 2000), LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:827 (May 2006), LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:0000 (June 2008), LR 34:

Chapter 17. Air Emission Standards

Subchapter A. Process Vents

§1709. Standards: Closed-Vent Systems and Control Devices

A. – D.6. …

E. Visible Emissions

1. Reference Method 22 in 40 CFR Part 60, Appendix A, incorporated by reference in LAC 33:III.3003, shall be used to determine the compliance of a flare with the visible emission provisions of this Subchapter. The observation period is two hours and shall be used according to Method 22.

2. The net heating value of the gas being combusted in a flare shall be calculated using the following equation.

$$H_T = K\left[\sum_{i=1}^{n} C_i H_i\right]$$

where:

H_T = net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20°C

K = constant, 1.74 X 10-1 (1/ppm) (g mol/scm) (MJ/kcal), where standard temperature for (g mol/scm) is 20°C

Ci = concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR Part 60, Appendix A, incorporated by reference in

LAC 33:III.3003, and measured for hydrogen and carbon monoxide by ASTM D 1946-82

Hi = net heat of combustion of sample component i, kcal/9 mol at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 if published values are not available or cannot be calculated

E.3. – O.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1698 (September 1998), LR 25:438 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

§1711. Test Methods and Procedures

A. – B. …

1. Monitoring shall comply with Reference Method 21 in 40 CFR Part 60, Appendix A, incorporated by reference in LAC 33:III.3003.

B.2. – C.1. …

a. Method 2 in 40 CFR Part 60, Appendix A, incorporated by reference in LAC 33:III.3003, for velocity and volumetric flow rate;

b. Method 18 or Method 25A in 40 CFR Part 60, Appendix A, incorporated by reference in LAC 33:III.3003, for organic content. If Method 25A is used, the organic hazardous air pollutants (HAP) used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

C.1.c. – F. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), LR 22:818 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1699 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:0000 (June 2008), LR 34:

§1741. Test Methods and Procedures

A. – B. …

1. Monitoring shall comply with Reference Method 21 in 40 CFR Part 60, Appendix A, incorporated by reference in LAC 33:III.3003.

B.2. – I. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1701 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:0000 (June 2008), LR 34:

Chapter 19. Tanks

§1907. Containment and Detection of Releases

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this Section must be provided (except as provided in Subsections F and G of this Section):

A.1. – E.3.c. …

F. Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of Subsections B and C of this Section, except for:

F.1. – G.2.a.v. …

b. the potential adverse effects of a release on groundwater quality, taking into account:

b.i. – c.iv. …

v. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality.

3. The owner or operator of a tank system, for which a variance from secondary containment has been granted in accordance with requirements of Paragraph G.1 of this Section, at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

a. comply with the requirements of LAC 33:V.1913, except 1913.D; and

b. decontaminate or remove contaminated soil to the extent necessary to:

i. enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

ii. prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; or

c. if contaminated soil cannot be removed or decontaminated in accordance with Subparagraph G.3.b of this Section, comply with the requirements of LAC 33:V.1915.B.

4. The owner or operator of a tank system, for which a variance from secondary containment has been granted in accordance with the requirements of Paragraph G.1 of this Section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

a. comply with requirements of LAC 33:V.1913.A-D;

b. prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if groundwater has been contaminated, the owner or operator must comply with requirements of LAC 33:V.1915.B; and

c. if repairing, replacing or reinstalling the tank system, provide secondary containment in accordance with the requirements of Subsections A-F of this Section or reapply for a variance from secondary containment and meet the requirements for new tank systems in LAC 33:V.1905 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed and groundwater or surface water has not been contaminated.

H. The following procedures must be followed in order to request a variance from secondary containment.

1. The Office of Environmental Assessment must be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in Subsection G of this Section according to the following schedule:

a. for existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with Subsection A of this Section;

b. for new tank systems, at least 30 days prior to entering into a contract for installation.

2. As part of the notification, the owner or operator must also submit to the administrative authority a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in Paragraph G.1 or 2 of this Section.

3. The demonstration for a variance must be completed within 180 days after notifying the administrative authority of an intent to conduct the demonstration.

4. If a variance is granted under this Paragraph, the administrative authority will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

I. – I.3. …

4. The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with Paragraphs I.1-3 of this Section.

5. If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in Paragraphs I.1-3 of this Section, the owner or operator must comply with the requirements of LAC 33:V.1913.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007), LR 34:624 (April 2008), LR 34:0000 (June 2008), LR 34:

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

§2230. Treatment Standards for Hazardous Debris

A. – B. …

1. the contaminants subject to treatment for debris that exhibit the Toxicity Characteristic (TC) described in LAC 33:V.4903.E are those extraction procedure (EP) constituents for which debris exhibit the TC toxicity characteristic;

B.2. – D.5.…

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:22 (January 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:445 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

§2246. Special Rules Regarding Wastes That Exhibit a Characteristic

A. – D.3. …

E. Generators or treaters who first claim that hazardous debris is excluded from the definition of *hazardous waste* under LAC 33:V.109.*Hazardous Waste*.6 (i.e., debris treated by an extraction or destruction technology provided by LAC 33:V.2299.Appendix, Table 8, and debris that the administrative authority has determined does not contain hazardous waste) are subject to the following notification and certification requirements.

E.1. – F.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007), LR 34:0000 (June 2008), LR 34:

§2247. Owners or Operators of Treatment or Disposal Facilities: Testing, Waste Minimization, Recordkeeping and Notice Requirements

A. – B.2.f. …

C. The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification must state:

> "I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in LAC 33:V.2223 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

A certification is also necessary for contaminated soil and it must state:

> "I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in LAC 33:V.2236 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

C.1. – H. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266, 267 (March 1995), LR 21:1334 (December 1995), LR 22:22

(January 1996), LR 22:820 (September 1996), LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:670 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:282 (February 2000), LR 26:2478 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 32:607 (April 2006), LR 33:2110 (October 2007), LR 34:0000 (June 2008), LR 34:

Chapter 23. Waste Piles

§2306. Response Actions

A. – B. …

1. notify the Office of Environmental Services in writing of the exceedance within seven days of the determination;

B.2. – C.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2480 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2111 (October 2007), LR 34:

§2311. Special Requirements for Ignitable or Reactive Waste

A. – A.1. …

a. the resulting waste, mixture, or dissolution of material no longer meets the description of ignitable or reactive waste under the characteristics of ignitability or reactivity in LAC 33:V.4903.B or D; and

1.b. – 2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:1057 (December 1990), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 25. Landfills

§2503. Design and Operating Requirements

A. – K.1.j. …

k. it is not an ignitable waste as described in LAC 33:V.4903.B;

l. it is not a corrosive waste as characterized by the pH limits in LAC 33:V.4903.C;

m. it is not a reactive waste as described in LAC 33:V.4903.D;

K.1.n. – N.2.b. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 17:368 (April 1991), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266, 267 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2480 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

§2508. Response Actions

A. – B. …

1. notify the Office of Environmental Services in writing of the exceedance within seven days of the determination;

B.2. – C.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2481 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2461 (October 2005), LR 33:2111 (October 2007), LR 34:

Chapter 29. Surface Impoundments

§2906. Response Actions

A. – B. …

1. notify the Office of Environmental Services in writing of the exceedance within seven days of the determination;

B.2. – C.4. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2483 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2113 (October 2007), LR 34:

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3025. Regulation of Residues

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under LAC 33:V.105.D.2.d, h, and i unless the device and the owner or operator meet the following requirements.

A. – B.2.a.Note. …

b. Metal Constituents. The concentration of metals in an extract obtained using the Toxicity Characteristic Leaching Procedure of LAC 33:V.4903.E must not exceed the levels specified in 40 CFR 266, Appendix VII, as adopted and amended at LAC 33:V.3099.Appendix G;

B.2.c. – C.2.b. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:826 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1107 (June 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:300 (March 2001), repromulgated LR 27:513 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:0000 (June 2008), LR 34:

Chapter 31. Incinerators

§3105. Applicability

A. – C. …

1. listed as a hazardous waste solely because it is ignitable or corrosive or both as described in LAC 33:V.4903.B and C; or

C.2. – E.Table 1.Footnote 1. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:1139 (December 1985), LR 13:433 (August 1987), LR 14:424 (July 1988), LR 15:737 (September 1989), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:318 (February 1998), LR 24:681 (April 1998), LR 24:1741 (September 1998), LR 25:479 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:301 (March 2001), LR 28:1004 (May 2002), LR 29:323 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:830 (May 2006), LR 34:629 (April 2008), LR 34:

§3111. Performance Standards

A. – A.3. …

4. An incinerator burning hazardous waste must not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) when corrected for the amount of oxygen in the stack gas according to the following formula. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the administrative authority will select an appropriate correction procedure, to be specified in the facility permit.

$$P_c = P_m \times \frac{14}{21 - Y}$$

where:

P_c = corrected concentration of particulate matter

P_m = measured concentration of particulate matter

Y = measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, presented in 40 CFR Part 60, Appendix A, incorporated by reference in LAC 33:III.3003

a. Repealed.

B. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs Division, LR 34:0000 (June 2008), LR 34:

Chapter 40. Used Oil

Subchapter A. Materials Regulated as Used Oil

§4003. Applicability

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

A. – B.2.b.…

c. regulation as used oil under this Chapter if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resulting mixture does not exhibit the characteristic of ignitability under LAC 33:V.4903.B.

B.3. – I. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828, 836 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 25:481 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 34:631 (April 2008), LR 34:0000 (June 2008), LR 34:

Chapter 43. Interim Status

Subchapter D. Manifest System, Recordkeeping, and Reporting

§4357. Operating Record

A. – B.9. …

10. records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal prohibition granted in accordance with LAC 33:V.2239, monitoring data required in accordance with an exemption under LAC 33:V.2241 or 2271 or the applicable notice required of a generator under LAC 33:V.2245. All of this information must be maintained in the operating record until closure of the facility;

11. – 17. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), LR 25:484 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1803 (October 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1626 (August 2007), LR 34:633 (April 2008), LR 34:0000 (June 2008), LR 34:

Subchapter E. Groundwater Monitoring

§4367. Applicability

Facilities that have interim status must comply with this Subchapter in lieu of LAC 33:V.Chapter 33.

A. – C.5. …

D. The groundwater monitoring requirements of this Subchapter may be waived with respect to any surface impoundment that is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under LAC 33:V.4903.C or listed as hazardous wastes in LAC 33:V.4901 only for the reason that they are corrosive and the surface impoundment contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional and must be approved by the administrative authority.

E. – E.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:484 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2499 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2126 (October 2007), LR 34:633 (April 2008), LR 34:0000 (June 2008), LR 34:

Subchapter I. Tanks

§4437. Containment and Detection of Releases

A. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this Section must be provided (except as provided in Subsections F and G of this Section):

A.1. – B.2.…

C. To meet the requirements of Subsection B of this Section, secondary containment systems must be at a minimum:

1. constructed of or lined with materials that are compatible with the waste to be placed in the tank systems and must have sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);

C.2. – D.4.…

E. In addition to the requirements of Subsections B-D of this Section, secondary containment systems must satisfy the following requirements.

1. – 2.d. …

e. provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

i. meets the characteristics of ignitable waste under LAC 33:V.4903.B; or

ii. meets the characteristics of reactive waste under LAC 33:V.4903.D and may form an ignitable or explosive vapor; and

2.e.iii. – 3.c. …

F. Ancillary equipment must be provided with full secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of Subsections B and C of this Section, except for:

F.1. – G.2.d.ii. ...

3. The owner or operator of a tank system, for which a variance from secondary containment has been granted in accordance with the requirements of Paragraph G.1 of this Section, at which a release of a hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), must:

a. comply with the requirements of LAC 33:V.4441, except LAC 33:V.4441.D; and

b. decontaminate or remove contaminated soil to the extent necessary to:

i. enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and

ii. prevent the migration of hazardous waste or hazardous constituents to groundwater or surface water; or

c. if contaminated soil cannot be removed or decontaminated in accordance with Subparagraph G.3.b of this Section, comply with the requirements of LAC 33:V.1915.B.

4. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of Paragraph G.1 of this Section, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), must:

a. – b. …

c. if repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of Subsections A-F of this Section or reapply for a variance from secondary containment and meet the requirements for new tank systems in LAC 33:V.4435 if the tank system is replaced. The owner or operator must comply with these requirements even if contaminated soil can be decontaminated or removed, and groundwater or surface water has not been contaminated.

H. – H.1. …

a. for existing tank systems, at least 24 months prior to the date that secondary containment must be provided in accordance with Subsection A of this Section; and

2.b. – 4. …

5. The administrative authority will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the administrative authority receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in Paragraph H.4 of this Section is extended, the 90-day time period will be similarly extended.

I. – I.2. …

3. The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with Paragraphs I.1-2 of this Section.

4. If a tank system or component is found to be leaking or unfit-for-use as a result of the leak test or assessment in Paragraphs I.1-2 of this Section, the owner or operator must comply with the requirements of LAC 33:V.4441.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), LR 18:723 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2507 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2482 (October 2005), LR 33:2134 (October 2007), LR 34:0000 (June 2008), LR 34:

Subchapter J. Surface Impoundments

§4459. Special Requirements for Ignitable or Reactive Waste

A. …

1. the waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that the resulting waste, mixture, or dissolution of material no longer meets the characteristics of ignitable or reactive waste under LAC 33:V.4903.B and D, and 4321.B is complied with; or

2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:1057 (December 1990), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Subchapter P. Chemical, Physical, and Biological Treatment

§4545. Special Requirements for Ignitable or Reactive Waste

A. …

1. the waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that the resulting waste, mixture, or dissolution of material no longer meets the characteristics of ignitable or reactive waste under LAC 33:V.4903.B and D, and 4321.B is complied with; or

2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

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

Chapter 9. Voluntary Remediation

§911. Application Process

A. – E. …

F. Public Hearing and Comment

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

F.2. – H. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:516 (April 2001), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 33:2139 (October 2007), LR 34:

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 7. Solid Waste Standards

Subchapter A. Landfills, Surface Impoundments, Landfarms

§711. Standards Governing Landfills (Type I and II)

A. – D.1.h.…

i. No solid waste shall be deposited in standing water, and standing water in contact with waste shall be removed immediately.

D.1.j. – F.3.d. …

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 19:1143 (September 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2523 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2492 (October 2005), LR 33:1047 (June 2007), LR 33:2145 (October 2007), LR 34:

Subchapter C. Minor Processing and Disposal Facilities

§721. Standards Governing Construction and Demolition Debris and Woodwaste Landfills (Type III)

A. – C.1.f. …

g. No solid waste shall be deposited in standing water, and standing water in contact with waste shall be removed immediately.

C.2. – E.3. …

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 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1067 (June 2007), LR 33:2149 (October 2007), LR 34:

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 3. Permits

Subchapter A. General Requirements

§301. Scope

A. – G. …

H. On the effective date of these regulations the status of state permits shall be as follows.

1. All LWDPS permits shall be issued for a period not to exceed five years.

H.2. – N. …

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 the Secretary, LR 22:344 (May 1996), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2538 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007), LR 34:

Chapter 11. Surface Water Quality Standards

§1123. Numerical Criteria and Designated Uses

A. – E. …

Table 3. Numerical Criteria and Designated Uses

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

Code	Stream Description	Designated Uses	Numerical Criteria						
			CL	SO_4	DO	pH	BAC	°C	TDS
Atchafalaya River Basin (01)									
* * * [See Prior Text in 010101 – 110701]									
Terrebonne Basin (12)									
* * * [See Prior Text in 120102 – 120301]									
120302	Bayou Folse–From headwaters to Company Canal	A B C D F	500	150	5.0	6.5-9.0	1	32	1,000
120303	Bayou L'Eau Bleu–From Company Canal to ICWW	A B C	500	150	5.0	6.5-9.0	1	32	1,000
* * * [See Prior Text in 120304 – 120806]									

ENDNOTES:

[1] – [24] …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:918, 921 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:815, 816, 817 (May 2006), LR 33:832 (May 2007), LR 34:

Part XI. Underground Storage Tanks

Chapter 11. Financial Responsibility

§1139. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance

A. – B. …

C. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator must obtain alternate financial assurance as specified in this Chapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Office of Environmental Assessment.

D. …

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of Environmental Assessment, LR 31:1578 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2174 (October 2007), LR 34:

Part XV. Radiation Protection

Chapter 6. X-Rays in the Healing Arts

§609. X-Ray and Electron Therapy Systems with Energies of 1 MeV and Above

A. – E.1.a. ...

b. the registrant or licensee shall obtain a written report of the survey from the qualified expert, and a copy of the report shall be transmitted by the registrant or licensee to the Office of Environmental Compliance within 30 days of receipt of the report; and

c. …

2. Calibrations shall be performed as follows:

a. the calibration of systems subject to this Section shall be performed in accordance with an established calibration protocol acceptable to the department before the system is first used for irradiation of a patient and thereafter at intervals that do not exceed 12 months, and after any change that might significantly alter the calibration, spatial distribution, or other characteristics of the therapy beam. The calibration protocol published by the American Association of Physicists in Medicine is accepted as an established protocol. For other protocols, the user shall submit that protocol to the Office of Environmental Compliance for written concurrence that the protocol is acceptable;

2.b. – 3. ...

a. the spot-check procedures shall be in writing and shall have been developed by a radiological physicist. A copy of the procedure shall be submitted to the Office of Environmental Compliance prior to its implementation;

3.b. – 4.c....

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2586 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2532 (October 2005), LR 34:

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

A public hearing will be held on July 29, 2008, 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. Two hours of free parking are allowed in the Galvez Garage 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 MM008. Such comments must be received no later than August 5, 2008, 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 MM008. 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: Environmental Quality

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

There will be no significant implementation costs or savings to state or local governmental units because of the proposed rule. The proposed rule makes technical changes to correct miscellaneous typographical, grammatical, punctuation, and numbering errors or omissions; and clarifies terms and definitions consistent with current administrative practice.

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

There is no estimated effect on revenue collections of state or local governmental units resulting from the proposed rule.

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

There will be no significant costs and/or economic benefits to directly affected persons or non-governmental groups because of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment because of the proposed rule.

Herman Robinson, CPM
Executive Counsel
0806#015

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Performance Testing Notifications and Reports
(LAC 33:III.523, 2107, 2108, 2511, 2521, 2531, and 5113)(AQ294)

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.523, 2107, 2108, 2511, 2521, 2531, and 5113 (Log #AQ294).

This rule will amend the variety of timeframes in the regulations for submitting reports of results following the completion of performance testing so that all reports are due 60 days after the completion of testing. The 60-day timeframe is consistent with other state policy testing requirements and with the majority of federal testing requirements. This rule will also require submittal of testing notifications to the department at least 30 days prior to testing, where testing is required in the regulations. This requirement is already located in several places in the regulations and is included as a general condition in all air permits issued by the department. These changes will make the regulations more consistent. Requiring all performance testing reports to be submitted within the same timeframe reduces confusion for the regulated community. Currently, the department receives many requests for extensions to submit test results, especially for test results that are due within 30 days of testing. Thirty days can be a difficult timeframe in which to prepare a report or results, especially for testing that involves several methods or scenarios. Increasing the timeframe will reduce the burden to facilities. Clearly stating that notifications are required where testing is required in the regulations also reduces confusion and makes the regulations more consistent throughout and with air permits issued by the department. The basis and rationale for this rule are to make the regulations more consistent and to incorporate into the regulations a requirement of all air permits issued by the department. 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.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air
Chapter 5. Permit Procedures
§523. Procedures for Incorporating Test Results

A. – B.2. …

3. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

4. Within 60 days of test completion, the administrative authority shall be given a report detailing the conditions that were found to exist. If there is to be no permanent change in emissions from pretest conditions, that should be stated.

5. If there is to be a permanent change made that increases emissions, all applicable requirements of this Chapter must be met. If emissions are to be reduced by the modification, the requirements of LAC 33:III.511 are applicable.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2107. Volatile Organic Compounds—Loading

A. – D.4. …

E. Test Methods

1. Compliance with Subsection B of this Section shall be determined by applying the following test methods, as appropriate:

a. Test Methods 1-4 (40 CFR Part 60, Appendix A, as incorporated by reference in LAC 33:III.3003) for determining flow rates, as necessary;

b. Test Method 18 (40 CFR Part 60, Appendix A, as incorporated by reference in LAC 33:III.3003) for determining gaseous organic compounds emissions by gas chromatography;

c. Test Method 25 (40 CFR Part 60, Appendix A, as incorporated by reference in LAC 33:III.3003) for determining total gaseous non-methane organic emissions as carbon;

d. Test Method 25A or 25B (40 CFR Part 60, Appendix A, as incorporated by reference in LAC 33:III.3003) for determining total gaseous organic concentration using flame ionization or nondispersive infrared analysis; and

e. flaring devices, which shall be designed and operated according to 40 CFR 60.18.

2. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

3. Within 60 days of test completion, a copy of the test results shall be submitted to the Office of Environmental Assessment for review and approval.

F. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:116 (February 1990), amended by the Office of Air Quality and Radiation Protection, LR 17:360 (April 1991), LR 22:1212 (December 1996), LR 24:20 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1442 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

§2108. Marine Vapor Recovery

A. – E.5.…

6. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

F. Reporting and Recordkeeping

1. The results of any testing done in accordance with Subsection E of this Section shall be reported to the Office of Environmental Assessment within 60 days of the test.

F.2. – H.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 14:704 (October 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:20 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2452 (November 2000), LR 30:745 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2439 (October 2005), LR 33:2085 (October 2007), LR 34:

Chapter 25. Miscellaneous Incineration Rules

Subchapter B. Biomedical Waste Incinerators

§2511. Standards of Performance for Biomedical Waste Incinerators

A. – E.6.e. …

7. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

8. A copy of all monitoring and tests results shall be submitted to the Office of Environmental Assessment for review and approval within 60 days of completion of testing.

F. – L. …

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 20:1098 (October 1994), amended LR 21:1081 (October 1995), 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 26:2455 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 33:2089 (October 2007), LR 34:

Subchapter C. Refuse Incinerators

§2521. Refuse Incinerators

A. – F.9.e. …

10. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

11. A copy of all monitoring and tests results shall be submitted to the Office of Environmental Assessment for review and approval within 60 days of completion of testing.

G. – H. …

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 20:1100 (October 1994), amended LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007), LR 34:

Subchapter D. Crematories

§2531. Standards of Performance for Crematories

A. – I.1.f. …

2. A copy of all test results shall be submitted to the Office of Environmental Assessment for review and approval within 60 days of completion of testing.

J. – J.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1107 (October 1994), amended LR 22:1127 (November 1996), LR 22:1212 (December 1996), LR 23:1509 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007), LR 34:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5113. Notification of Start-Up, Testing, and Monitoring

A. – A.2. …

B. Emission Tests and Waiver of Emission Tests

1. The department may require any owner or operator to conduct tests to determine the emission of toxic air pollutants from any source whenever the department has reason to believe that an emission in excess of those allowed by this Subchapter is occurring. The department may specify testing methods to be used in accordance with good professional practice. The department may observe the testing. The Office of Environmental Assessment shall be notified at least 30 days prior to testing to afford the department the opportunity to conduct a pretest conference and to have an observer present. All tests shall be conducted by qualified personnel. The Office of Environmental Assessment shall be given a copy of the test results in writing signed by the person responsible for the tests within 60 days after completion of the test.

2. – 4.e. …

5. Unless otherwise specified, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Office of Environmental Assessment by a certified letter sent before the close of business on the sixtieth day following the completion of the emission test.

B.6. – C.7. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1364 (December 1992), LR 23:59 (January 1997), LR 23:1658 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2461 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 33:2094 (October 2007), LR 34:

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

A public hearing will be held on July 29, 2008, 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. Two hours of free parking are allowed in the Galvez Garage 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 AQ294. Such comments must be received no later than August 5, 2008, 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 AQ294. 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: Performance Testing Notifications and Reports

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

There is no anticipated cost or savings to state or local governmental units to implement this rule.

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 as a result of this rule.

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

There is no estimated cost or economic benefits to directly affected persons or non-governmental groups as a result of this rule. Performance test notifications and reports are already required by regulation and permit. This rule clarifies the requirement for notification where the requirement is not specifically stated. Even when the regulation does not expressly state that a notification of performance testing is required, all

air permits issued by DEQ require notification prior to testing. Additionally, this rule makes the timeframe for submitting test results consistent. The requirement for submittal of performance test results currently varies between 30, 45, and 60 days. This rule will make all performance test results due within 60 days, which is consistent with EPA's requirement under 40 CFR 63.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment as a result of this rule.

Herman Robinson, CPM
Executive Counsel
0806#016

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Secondary Containment for UST Systems
(LAC 33:XI.103, 301, 303, 403, 507, 509, 701, 703, and 903)(UT014)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Underground Storage Tanks regulations, LAC 33:XI.103, 301, 303, 403, 507, 509, 701, 703, and 903 (Log #UT014).

This proposed rule will require owners and/or operators of UST systems to install secondary containment with new installations or replacements of tanks and/or piping, and also to install under-dispenser containment and submersible pump containment, after December 20, 2008. The rule will also require the installation of secondary containment for certain repairs to tanks or piping made after December 20, 2008. The difference between "replacement" and "repair" is clarified. The federal 2005 Underground Storage Tank Compliance Act, which amends Section 9003 of 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 require that USTs installed in the state have secondary containment. This action must be implemented to maintain federal funding of the UST program in the state and to maintain federal delegation of the UST program. This will further enhance our effort to maintain protection of human health and the environment. The basis and rationale for this rule are to comply with the federal guidelines required by the 2005 Underground Storage Tank Compliance Act. 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.

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tanks
Chapter 1. Program Applicability and Definitions
§103. Definitions

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

* * *

Install or *Installation*—the process of placing a UST system in the ground and preparing it to be put into service.

* * *

Pipe or *Piping*—a hollow cylinder or tubular conduit that is constructed of non-earthen materials and that routinely contains and conveys regulated substances from a UST to a dispenser or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the UST to the dispenser. This definition does not include vent, vapor recovery, or fill lines.

* * *

Replace or *Replacement*—to remove an existing UST and install a new UST in substantially the same location as the removed tank, or to remove and replace 25 percent or more of piping associated with a single UST.

* * *

Secondary Containment—a containment system that utilizes an outer or secondary container or impervious liner designed to prevent releases of regulated substances from the primary container from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such systems include, but are not limited to, double-wall tanks and piping, jacketed tanks and piping that have an interstitial space that allows for interstitial monitoring, and any other such system approved by the department prior to installation.

* * *

Under-Dispenser Containment—a containment system beneath a dispenser designed to prevent releases of regulated substances from the dispenser or contained piping from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such containment must be liquid-tight on its sides, bottom, and at any penetrations, and must allow for visual inspection and access to the components in the containment system or be regularly monitored.

* * *

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:520 (April 2001), amended by the Office of Environmental Assessment,

LR 31:1065 (May 2005), LR 31:1577 (July 2005), repromulgated LR 31:2002 (August 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§301. Registration Requirements

A. – B.1. …

a. tank and piping installation in accordance with LAC 33:XI.303.D.6, including secondary containment of new and replacement tanks and/or piping, under-dispenser containment, and submersible pump containment;

b. cathodic protection of steel tanks and piping in accordance with LAC 33:XI.303.D.1-2;

c. – d. …

2. All owners of new UST systems must ensure that the installer certifies on the registration form that the methods used to install the tanks and piping comply with the requirements of LAC 33:XI.303.D.6.a. Beginning January 20, 1992, registration forms shall include the name and department-issued certificate number of the individual exercising supervisory control over *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system.

C. – C.4.…

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, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), repromulgated LR 32:393 (March 2006), amended LR 32:1852 (October 2006), LR 33:2171 (October 2007), LR 34:

§303. Standards for UST Systems

A. …

B. New UST Systems Near Active or Abandoned Water Wells. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all new UST systems installed within 50 feet of an active or abandoned water well must meet the requirements of LAC 33:XI.703.C.2.

C. Standards for UST Systems Installed After December 20, 2008. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all UST systems installed after December 20, 2008, located more than 50 feet from an active or abandoned water well shall have secondary containment in accordance with Subsection D of this Section.

1. If a single-walled UST is placed in the ground at the location where it is to be put into service prior to December 20, 2008, the UST owner is allowed 90 days (until March 20, 2009) to complete the UST system installation without having to comply with the secondary containment requirements in Subsection D of this Section.

2. The department may grant an extension to these dates only in the event that the UST or UST system installation is delayed due to adverse weather conditions or other unforeseen, unavoidable circumstances. A written contract alone does not qualify as an unforeseen, unavoidable circumstance. In order to obtain an extension, the UST owner must submit a written request to the Office of Environmental Assessment, describing the circumstances that have caused the installation delay.

D. All new UST systems shall comply with the following standards.

1. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the tank is constructed of fiberglass-reinforced plastic; or

b. the tank is constructed of metal and cathodically protected in the following manner:

i. the tank is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or according to guidelines established by the department; or

c. the tank is constructed of a metal-fiberglass-reinforced-plastic composite; or

d. the tank is constructed of metal without additional corrosion protection measures, provided that:

i. the tank is installed at a site that a corrosion expert determines will not be corrosive enough to cause the tank to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause D.1.d.i of this Section for the remaining life of the tank; or

e. the tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the constructions listed in Subparagraphs D.1.a-d and f of this Section; and

f. for any UST system that is installed or replaced after December 20, 2008, along with meeting the requirements of Subparagraphs D.1.a-e of this Section, the tank employs *secondary containment*, as defined in LAC 33:XI.103, as follows:

i. it is an accepted UST design as described in Subparagraphs D.1.a-e of this Section, is of double-walled or jacketed construction in accordance with Subsection A of this Section, is capable of containing a release from the inner wall of the tank, and is designed with release detection in accordance with LAC 33:XI.701.A.6.a; or

ii. it is some other secondarily-contained tank system approved by the department prior to installation.

2. Piping. Piping on new UST systems that routinely contains regulated substances and is in contact with the ground or water must be properly designed, constructed, and protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the piping is constructed of fiberglass-reinforced plastic; or

b. the piping is constructed of metal and cathodically protected in the following manner:

i. the piping is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or guidelines established by the department; or

c. the piping is constructed of metal without additional corrosion protection measures, provided that:

i. the piping is installed at a site that a corrosion expert determines is not corrosive enough to cause the piping to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause D.2.c.i of this Section for the remaining life of the piping; or

d. the piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in Subparagraphs D.2.a-c, e, and f of this Section; or

e. the piping is of double-walled non-metallic flexible or semi-rigid construction;

f. if piping connected to a UST is installed or replaced after December 20, 2008, along with meeting the requirements of Subparagraphs D.2.a-e of this Section, the piping employs *secondary containment*, as defined in LAC 33:XI.103, as follows:

i. any of the accepted piping designs listed in Subparagraphs D.2.a-e of this Section shall be fabricated with double-walled or jacketed construction in accordance with Subsection A of this Section, shall be capable of containing a release from the inner wall of the piping, shall be designed with release detection in accordance with LAC 33:XI.701.B.4; or

ii. the piping system shall have some other form of secondary containment system approved by the department prior to installation; and

g. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, it shall comply with Clause D.2.f.i or ii of this Section. If a new motor fuel dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system, then the new piping shall comply with Clause D.2.f.i or ii of this Section. Suction piping that meets the requirements of LAC 33:XI.703.D.2.b.i–v and suction piping that manifolds two or more tanks together are not required to meet the secondary containment requirements outlined in this Paragraph.

3. Spill and Overfill Prevention Equipment

a. Except as provided in Subparagraph D.3.b of this Section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use:

i. spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket). Spill buckets shall have liquid-tight sides and bottoms and be maintained free of regulated substances. Regulated substances spilled into any spill bucket shall be immediately removed by the UST owner and/or operator or the bulk fuel distributor. The presence of greater than one inch of regulated substances in a spill bucket is a violation of this Section and may result in issuance of an enforcement action to the UST owner and/or operator and the bulk fuel distributor, common carrier, or transporter; and

ii. overfill prevention equipment that will:

(a). automatically shut off flow into the tank when the tank is no more than 95 percent full;

(b). alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(c). restrict flow 30 minutes prior to overfilling, or alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings on top of the tank are exposed to product because of overfilling.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in Subparagraph D.3.a of this Section if:

i. alternative equipment is used that the department determines is no less protective of human health and the environment than the equipment specified in Clause D.3.a.i or ii of this Section; or

ii. the UST system is filled by transfers of no more than 25 gallons at one time.

4. Under-Dispenser Secondary Containment. After December 20, 2008, under-dispenser containment sumps:

a. are required under the following conditions:

i. in any installation of a new dispenser at a new facility;

ii. in any installation of a new dispenser at an existing facility where new piping is added to the UST system to connect the new dispenser to the existing system;

iii. in any installation of a replacement dispenser at an existing facility where the piping that connects the dispenser to the existing piping is replaced, including replacing the metal flexible connector, riser, or other transitional components that are beneath the dispenser and the impact shear valve and that connect the dispenser to the piping. Replacing an existing dispenser where no piping and none of the piping that connects the dispenser to the existing piping are replaced does not require the addition of an under-dispenser containment sump; and

b. shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any under-dispenser containment sump shall be immediately removed upon discovery to the maximum extent practicable.

5. Submersible Turbine Pump (STP) Secondary Containment. After December 20, 2008, secondary containment for submersible pumps:

a. is required under the following conditions:

i. in any installation of a new STP at a new facility;

ii. in any installation of an STP (the entire STP, STP housing, and riser pipe) at an existing facility where new piping is added to the UST system to connect the new STP to the existing system;

iii. in any installation of a replacement STP (the entire STP, STP housing, and riser pipe) at an existing facility where the piping that connects the STP to the existing piping is replaced. Replacing the metal flexible connector with a single-walled flexible connector requires the addition of a containment sump. Replacing the metal flexible connector with a double-walled flexible connector does not require the addition of a containment sump as long as the newly-installed STP is secondarily contained, and replacing an existing STP where no piping is replaced does not require the addition of STP secondary containment; and

b. can consist of either a built-in secondary containment system or a STP containment sump. STP containment sumps installed after December 20, 2008, shall have liquid-tight sides and bottoms and be maintained free of storm water and debris. Regulated substances spilled into any STP containment sump shall be immediately removed upon discovery to the maximum extent practicable.

6. Installation Procedures

a. Installation. All tanks and piping must be installed in accordance with Subsection A of this Section and in accordance with the manufacturer's instructions.

b. Certification of Installation and Verification of Installer Certification

i. From the date of promulgation of these regulations until January 20, 1992, owners and operators must certify installations as follows. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with Subparagraph D.6.a of this Section by providing a certification of compliance on the UST registration form (UST-REG-02) in accordance with LAC 33:XI.301:

(a). the installer has been certified by the tank and piping manufacturers; or

(b). the installation has been inspected and certified by a professional engineer with education and experience in UST system installation; or

(c). the installation has been inspected and approved by the department; or

(d). all work listed in the manufacturer's installation checklists has been completed; or

(e). the owner and operator have complied with another method for ensuring compliance with Subparagraph D.6.a of this Section that is determined by the department to be no less protective of human health and the environment.

ii. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *installation critical-junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph D.6.a of this Section, all owners and operators must provide a certification of compliance on the UST Registration of Technical Requirements Form (UST-REG-02) within 60 days of the introduction of any regulated substance. Forms shall be filed with the Office of Environmental Assessment.

c. Notification of Installation. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning installation of a UST system by:

i. completing the Installation, Renovation and Upgrade Notification Form (UST-ENF-04);

ii. notifying the appropriate regional office of the Office of Environmental Assessment by mail or fax seven days prior to commencing the installation and before commencing any *installation-critical juncture* (as defined in LAC 33:XI:1303);

iii. including in the notification a statement of the number of active or abandoned water wells within 50 feet of the UST system and the type of system to be installed; and

iv. including in the notification the methods to be used to comply with LAC 33:XI.Chapter 7.

E. Upgrading Existing UST Systems to New System Standards

1. Not later than December 22, 1998, all existing UST systems must comply with one of the following sets of requirements:

a. new UST system performance standards under Subsection D of this Section; or

b. the upgrading requirements in Paragraphs E.3-6 of this Section.

2. After December 22, 1998, all existing UST systems not meeting the requirements of Paragraph E.1 of this Section must comply with closure requirements under LAC 33:XI.Chapter 9, including applicable requirements for corrective action under LAC 33:XI.715.

3. Tank Upgrading Requirements. Metal tanks must be upgraded in accordance with Subsection A of this Section and meet one of the following requirements.

a. Internal Lining. A tank may be upgraded by internal lining if:

i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and

ii. within 10 years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

b. Cathodic Protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of Clauses D.1.b.ii, iii, and iv of this Section, and the integrity of the tank is ensured using one of the following methods.

i. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes before the cathodic protection system is installed.

ii. The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with LAC 33:XI.701.A.4-8.

iii. The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of LAC 33:XI.701.A.3. The first tightness test must be conducted before the cathodic protection system is installed. The second tightness test must be conducted between three and

six months after the first operation of the cathodic protection system.

iv. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than the methods specified in Clauses E.3.b.i-iii of this Section.

v. All procedures used to upgrade existing UST systems by cathodic protection shall be conducted in accordance with applicable requirements of the Louisiana Department of Transportation and Development, or its successor agency.

c. Internal Lining Combined with Cathodic Protection. A tank may be upgraded by both internal lining and cathodic protection if:

i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and

ii. the cathodic protection system meets the requirements of Clauses D.1.b.ii, iii, and iv of this Section.

4. Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with the ground or water must be cathodically protected and must meet the requirements of Clauses D.2.b.ii, iii, and iv of this Section.

5. Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with the requirements for spill and overfill prevention equipment for new UST systems specified in Paragraph D.3 of this Section.

6. Reporting Requirements

a. The owner and operator must notify the Office of Environmental Assessment in writing at least 30 days before beginning a UST system upgrade.

b. An amended registration form (UST-REG-02) must be submitted to the Office of Environmental Assessment within 30 days after the UST system is upgraded. The owner and operator must certify compliance with Subsection C of this Section on the amended registration form (UST-REG-02). Beginning January 20, 1992, the amended registration forms (UST-REG-01 and 02) shall include the name and department-issued certificate number of the individual exercising supervisory control over those steps in the upgrade that involve repair-critical junctures or installation-critical junctures (as defined in LAC 33:XI.1303) of a UST system.

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, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:

Chapter 4. 2005 Federal Underground Storage Tank Compliance Act Mandated Requirements

§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank Systems

A. – B.3. …

4. failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances in accordance with LAC 33:XI.303.D.2 and E.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. – E. …

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 33:1867 (September 2007), amended LR 34:

Chapter 5. General Operating Requirements

§507. Repairs Allowed

A. – A.6. …

7. After December 20, 2008, if any piping repair or replacement impacts 25 percent or more of the UST piping in the repaired piping run, that entire piping run shall be upgraded with secondary containment and meet the requirements of LAC 33:XI.303.D.2 and 701.B.4.

B. …

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:

§509. Reporting and Recordkeeping

A. Reporting. Owners and operators must submit the following information to the department:

1. registration forms (UST-REG-01 and 02) for all UST systems (LAC 33:XI.301), including certification of installation and verification of installer certification for new UST systems, in accordance with LAC 33:XI.303.D.6.b;

2. – 5. …

B. Recordkeeping. Owners and operators must maintain the following information:

1. a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (LAC 33:XI.303.D.1.d and D.2.c);

2. – 5. …

6. documentation of the type and construction of the tank, piping, leak detection equipment, corrosion protection equipment, and spill and overfill protection equipment currently in use at the site; and

B.7. – C.…

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:393 (March 2006), amended LR 34:

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§701. Methods of Release Detection

A. – A.6. …

a. For double-walled UST systems, the sampling or testing method used must be capable of detecting a release through the inner wall in any portion of the tank that routinely contains product. Interstitial monitoring of double-walled or jacketed tanks shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space, or manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

A.6.b. – B.2. …

3. Applicable Tank Methods. Any of the methods in Paragraphs A.4-8 of this Section may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

4. Interstitial Monitoring. Interstitial monitoring of double-walled or jacketed piping shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or sump, or manually every 30 days by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or sump.

a. The interstitial space or sump shall be maintained free of water, debris, or anything that could interfere with leak detection capabilities.

b. Subparagraph D.4.a of this Section does not apply to containment sumps that were installed prior to December 20, 2008, and that do not utilize interstitial monitoring as a piping release detection method.

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1072 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33: 2172 (October 2007), LR 34:

§703. Requirements for Use of Release Detection Methods

A. – B. …

1. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in LAC 33:XI.701.A.4-8, except for the following.

a. UST systems that meet the performance standards in LAC 33:XI.303.D or E, and the monthly inventory control requirements in LAC 33:XI.701.A.1 or 2, may use tank tightness testing (conducted in accordance with LAC 33:XI.701.A.3) at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded in accordance with LAC 33:XI.303.E.3, whichever is later.

b. UST systems that do not meet the performance standards in LAC 33:XI.303.D or E may use monthly inventory controls (conducted in accordance with LAC 33:XI.701.A.1 or 2), and tank tightness testing every 12 months (conducted in accordance with LAC 33:XI.701.A.3) until December 22, 1998, when the tank must be upgraded in accordance with LAC 33:XI.303.E or permanently closed in accordance with LAC 33:XI.905.

B.1.c. – C.2.e.iii. …

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:

Chapter 9. Out-of-Service UST Systems and Closure

§903. Temporary Closure

A. – B.3. …

C. When a UST system is temporarily closed for more than six months, owners and operators must permanently close the UST system if it does not meet either the performance standards in LAC 33:XI.303.D for new UST systems or the upgrading requirements in LAC 33:XI.303.E.3-6, except that the spill and overfill equipment requirements do not have to be met.

D. – E. …

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2173 (October 2007), LR 34 :

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

A public hearing will be held on July 29, 2008, 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. Two hours of free parking are allowed in the Galvez Garage 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 UT014. Such comments must be received no later than August 5, 2008, 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 UT014. 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: Secondary Containment for UST Systems

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

State and local government agencies that have underground storage tanks (USTs) will incur extra costs when they replace or repair their USTs. There will be approximately a 25 percent increase in the cost of installing secondary containment tanks and piping over installing single-wall tank systems. Government agencies may avoid incurring the extra costs, should they choose to do so, by closing their UST systems and moving to third party providers.

Secondary containment requirements will allow for earlier release detection, reducing releases to the environment, resulting in fewer and lower claims to the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) managed by the department.

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

Revenue collections of state and local governmental units will not change as a result of this proposed rule.

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

Underground storage tank owners and operators will be directly affected by the proposed rule. There will be approximately a 25 percent increase in the cost of installing secondary containment tanks and piping over installing single-wall tank systems. According to department records, approximately 50 new UST systems have been installed in the state over the last year. Several of the larger companies currently install secondary containment for their systems; therefore, they will not be impacted by this proposed rule. Secondary containment should result in gradual reduction in reported releases requiring remediation, therefore ultimately offsetting the cost of the requirement in whole or in part. A decrease of third party law suits concerning offsite migration may result from the requirement for secondary containment, due to earlier detection of releases.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

As all owners and operators of UST systems will be subject to the proposed rule, there should be no impact on competition among those UST owners/operators who choose to remain in the business. The 25 percent increase in costs associated with upgrading existing UST systems that are replaced as required by the proposed rule may result in some marginal UST stations choosing to close rather than spend the money to comply with the proposed rule. Current market trends show that this consolidation would continue to take place without the proposed rule.

Herman Robinson, CPM
Executive Counsel
0806#014

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Board of Examiners of Interior Designers

Interior Designers
(LAC 46:XLIII.101, 107, 109, 117, 501, 701, 703, 704, 705, 802, 803, 804, 805, 901, 902, 903, 907, 909, 1001, 1003, 1005, 1104, 1106, 1108, 1110, 1201, and 1203)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:3171 that the Board of Examiners of Interior Designers proposes to amend its existing rules and regulations to update name changes of professional organizations, clarify existing rules, and take care of basic housekeeping issues.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLIII. Interior Designers
Chapter 1. Composition and Operation of the Board

§101. Name

A. The name of this board shall be the Board of Examiners of Interior Designers, hereinafter called the "board," as provided for by Act 227 of the 1984 Regular Legislative Session, hereinafter called the "Act."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1073 (November 1991). amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

§107. Order of Business

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1073 (November 1991), repealed by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

§109. Expenses of the Board

A. Members of the board shall receive no compensation for their services but shall receive the same per diem and mileage as is provided by law for the members of the legislature for each day the board conducts business. Out of the funds of the board each board member shall be compensated at the legislative per diem rate for each day in attending board meetings and hearings, attending NCIDQ meetings, issuing certificates and licenses, reviewing examinations, necessary travel, and discharging other duties, responsibilities and powers of the board. In addition, out of said funds each board member shall be reimbursed actual travel, meals, lodging, clerical and other incidental expenses incurred while performing the duties, responsibilities, and powers of the boards, including but not limited to performing the aforesaid specific activities. Per Diem and travel expenses to attend NCIDQ meetings shall be paid to only the member appointed by the board to represent the

board at the NCIDQ meeting and attend said meetings, unless otherwise specified by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3175.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1073 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

§117. Staff

A. The board may, at its discretion, employ an executive director, legal counsel, and such other assistants and clerical staff as it deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1074 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

Chapter 5. Fees and Charges

§501. Fees and Charges

A. All fees and charges except for the annual renewal fee must be made be cashier's check or money order. The annual renewal fee may be paid by business or personal check, unless required otherwise by the board. The following fees and charges have been established.

Licensing	$150
Annual Renewal Fee	$150
Restoration of Expired License or Reactivation of Expired License	$150
Replacing Lost Certificate	$ 25
Restoration of Revoked or Suspended License	$150
Failure to Renew License within the Time Limit Set by the Board	$ 50

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3182 and R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:339 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1011 (May 2004), LR 34:

Chapter 7. Issuance and Reinstatement of Licenses of Registration

§701. Issuance

A. Licenses of registration issued by the board shall run to and include December 31 of the calendar year following their issue. The initial registration fee payable by cashier's check or money order of $150 should be submitted with the application to the board. Licenses must be renewed annually for the following calendar year, by the payment of a fee of $150, provided that any approved applicant who has paid the initial registration fee within the past 6 months year shall not be required to pay the renewal fee until December 31 of the next succeeding calendar year. Licenses not renewed by December 31 shall become invalid, except as otherwise provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), LR 20:864 (August 1994), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1011 (May 2004), LR 34:

§703. Restoration of an Expired License

A. A license expires on December 31 of each year. If renewing within 12 months of expiration, the licensee must pay the renewal fee plus the late fee.

B. If a licensee seeks to renew their license from 13–24 months past expiration, the licensee must pay the renewal fee plus the restoration fee.

C. If a licensee is a NCIDQ certificate holder and their license has expired for more than 24 months, the licensee must pay the restoration fee plus the renewal fee for each year lapsed.

D. If a licensee is not a NCIDQ certificate holder and their license has expired for more than 24 months, the person must apply for a new license meeting the current requirements.

E. A licensee may reinstate his or her license only with proof that he or she has completed the continuing education units equal to that number required for each year in which his or her license was invalid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), LR 20:864 (August 1994), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1011 (May 2004), LR 34:

§704. Restoration of Expired Certificates

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended LR 20:864 (August 1994), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1012 (May 2004), repealed LR 34:

§705. Lost or Destroyed Certificates/ID Cards

A. Lost or destroyed certificates or ID cards may be replaced on presentation of a sworn statement giving the circumstances surrounding the loss or destruction thereof, together with a fee of $25. Such replaced certificates shall be marked "duplicate."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1012 (May 2004), LR 34:

Chapter 8. Continuing Education

§802. Continuing Education Units

A. The definition of a continuing education unit will be the same definition used by the Interior Design Continuing Education Council (IDCEC) or a direct replacement entity,

which has ruled that one "contact hour" will equal 0.1 continuing education unit, or "CEU."

B. The board will only approve continuing education units which build upon the basic knowledge of Interior Design and which also include topics which concentrate on the subjects of health, safety and welfare as defined by the Interior Design Continuing Education Council (IDCEC) or a direct replacement entity.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1075 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1012 (May 2004), LR 34:

§803. Verified Credit

A. - B. ...

C. The board shall approve those programs submitted for board approval based upon the following factors:

1. the program must comply with The Interior Design Continuing Education Council (IDCEC) criteria;

C.2. - E. …

F. Courses with current IDCEC (Interior Design Continuing Education Council) approvals must be submitted no less than 30 days in advance of the presentation. Courses not currently IDCEC approved must be submitted at least 75 days in advance of the presentation. Programs submitted for approval after they have been given will be reviewed by the board, but approval is not guaranteed. Further, programs which are not approved prior to the date scheduled for the program cannot publish that they have been approved by the state of Louisiana as interior design continuing education units.

G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1076 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1012 (May 2004), LR 34:

§804. Approved Programs

A. Any HS (health, safety) program approved by the Interior Design Continuing Education Council (IDCEC) or any direct replacement entity will be pre-approved for credit by the Board. W (welfare) programs approved by the Interior Design Continuing Education Council (IDCEC) are subject to review for approval. The board by majority vote shall appoint a Continuing Education Advisory Committee which shall solicit, examine, review and recommend for approval by the board all continuing education courses which may be used by registrants and licensees to meet the requirements of this Chapter and Section 3179 of Title 37 of the Louisiana Revised Statutes.

B. The membership of the Continuing Education Advisory Committee shall be appointed by the chair.

C. - D.4. ...

5. verification of course completion. The information must include the sponsor's method for verifying attendance, participation and achievement of program learning objectives; Online courses, magazine articles, and any other home study programs not already IDCEC approved will be required to have testing in place in order to qualify for the review/approval process.

C.6. - E.1. …

a. Programs already approved by professional organizations including ASID, IIDA, IDEC, IFMA, BOMA, NFPA, SBC AIA, code councils or the IDCEC—$10

b. Programs not already approved by an organization listed in this section requested for approval by individual licensee—$25

c. Programs not already approved by an organization listed in this section requested for approval by the provider or sponsor—$100.

2. - 3 …

F. Committee Meetings

a. …

b. Corresponding members will receive information regarding applications for CEU approval by electronic transfer and may respond via the same.

c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1076 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1012 (May 2004), LR 34:

§805. Recording and Submission of Credits

A. - C. …

D. CEU courses may not be repeated within a 3-year period of time for credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1076 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

Chapter 9. Examination and Registration

§901. Qualifications for Registration

A. - A.4.

B. All such education shall have been obtained in a program, school, or college of interior design accredited by the Council for Interior Design Accreditation (CIDA) or any direct replacement entity or in an unaccredited program, school or college of interior design approved by the board. The unaccredited program, school or college of interior design will be evaluated on a case by case basis. The board shall review and approve interior design experience on a case by case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3177.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1076 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

§902. Licensing without Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with RS. 37:3174 and 37:3178.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1013 (May 2004), repealed LR 34:

§903. Application Procedure

A. Application must be made to the board on application forms obtained from the State Board of Examiners of Interior Designers and required fees filed. Application forms may be obtained by contacting the board office.

B. - B.9. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174 and R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1077 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1013 (May 2004), LR 34:

§907. Examination

A. The examination for purposes of the Act shall be the National Council for Interior Design Qualification (NCIDQ) Examination, which shall be held at least twice a year in the state of Louisiana. Application forms for said examinations may be obtained by contacting NCIDQ directly. The applicant must pass all portions of the examination and submit proof of passage to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3177.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1077 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

§909. Seal and Display of License Number

A. - B. …

C. Any licensed or registered interior designer who advertises his services through any medium, including but not limited to advertising in newspapers, magazines or on television, websites and emails, and to stationery and business cards, shall indicate in such advertisement his name, business address and registration number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.2.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1077 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1013 (May 2004), LR 34:

Chapter 10. Use of Term "Interior Design" and "Interior Designer"

§1001. Limitation of Use of Term

A. Only those who are licensed as a registered interior designer by the board may use the appellation interior design, interior designer, licensed interior designer or registered interior designer or the plural thereof in advertising or in business usage when referring to themselves or services to be rendered.

B. - B.*Registered Interior Designer* …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3171 and R.S. 37:3176.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1014 (May 2004), LR 34:

§1003. Firm Practice

A. ...

B. License numbers for interior designers in the State of Louisiana are assigned to individuals, not businesses. Only those to whom the number is issued may use that number on business cards or any printed materials, advertising, or signage of a firm. If someone in a firm is not yet licensed, that individual is never allowed to use the number of a licensed interior designer. Using someone else's number would be in violation of the law and would imply the number belongs to the person on the card. Doing so could be grounds for disciplinary action or fines by the state board. No number should appear on the business card of the person who is not yet licensed. If this person were questioned, he/she would provide the information of the licensee who is supervising their work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3180.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1014 (May 2004), LR 34:

§1005. Use of Term by Business

A. A firm shall be permitted to use in its title the term registered interior designer and to be so identified on any sign, card, stationery, device, or other means of identification if at least one partner, director, officer, or other supervisory agent of such firm is licensed as an interior designer in this state, subject to the requirements of Subsection B of this Section.

B. The board requires a firm, partnership, corporation, or association that engages in the practice of interior design to register with the board under the title: Louisiana Registered Interior Design Firm. The Registered Interior Design Firm must have at least one Louisiana Registered Interior Designer in their employment at all times. The board requires that a firm that no longer employs a Louisiana Registered Interior Designer must notify the board and cease using the title Louisiana Registered Interior Design Firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3180.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1014 (May 2004), LR 34:

Chapter 11. Revocation or Suspension of Licenses of Registration

§1101. Authority of Board of Suspend or Revoke

A. The board may suspend for a definite period or revoke any license of registration on those grounds mentioned in the Act, which include:

A.1. - A.21. ...

B. - F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179 and R.S. 37:3181.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Interior Designers, LR 11:340 (April 1985), amended by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1078 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1014 (May 2004), LR 34:

§1104. Hearings

A.. …

B. Proceedings to revoke, rescind or suspend the license of registration of an interior designer shall commence by any person filing a sworn affidavit with the board against the interior designer. A time and place for the hearing of the charges shall be fixed by the board. The board, upon its own motion, may investigate the actions of any interior designer and file a complaint against him.

C. - D. …

E. No action shall be taken to rescind, revoke, or suspend the license of registration of any interior designer unless a quorum of the board is present at the hearing and then only by an affirmative vote of at least four of the members of the board present.

F. If the board determines upon the suspension of the license of registration of any interior designer, it shall fix the duration of the period of the suspension.

G. If the board revokes, rescinds, or suspends the license of registration of any interior designer, the secretary of the board shall give written notice of its action by registered or certified mail to the person against whom the complaint was filed at the last known address.

H. …

I. Any licensed or registered interior designer who has been found guilty by the board of the charges filed against him and whose license of registration has been revoked, rescinded, or suspended, shall have the right to appeal to the district court of the parish in which the hearing was held. The appeal shall be governed by the Administrative Procedure Act, R.S. 49:950 et seq.

J. The board shall have the power to issue a new license of registration, change a revocation to a suspension, or shorten the period of suspension, upon satisfactory evidence that proper reasons for such action exist, presented by any person whose license of registration as an interior designer has been revoked, rescinded or suspended. Any person whose license of registration has been suspended shall have his license of registration automatically reinstated by the board at the end of his period of suspension upon payment of the renewal fee. No delinquent fee shall be charged for reinstatement of license of registration under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174, R.S. 37:3179 and R.S. 37:3181.

HISTORICAL NOTE: Promulgated the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1015 (May 2004), amended LR 34:

§1106. Fine for Restoration of Revoked or Suspended License

A. The board may require a licensee who has had his license revoked or suspended pursuant to the provisions of this Chapter to pay a fine of up to $500 in addition to those charges contained in §703 to have his license restored to him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179 and R.S. 37:3182.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1079 (November 1991), amended by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1016 (May 2004), LR 34:

§1108. Disciplinary Committee

A. …

B. The chairman of the board shall appoint the members of the disciplinary committee.

C. All complaints filed with the board shall be reviewed by the Disciplinary Committee before submission to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Interior Designers, LR 30:1016 (May 2004), amended LR 34:

§1110. Prohibited Acts and Penalties

A. Unless otherwise exempted, any person who knowingly engages in the practice of interior design without a valid license of registration violates this Chapter.

B. Any person who violates any provision of this Chapter or any rules and regulations adopted under its authority shall be fined not more than $500 for each such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3179.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

Chapter 12. Miscellaneous

§1201. Lending Books

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Interior Designers, LR 17:1079 (November 1991), repealed by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

§1203. Committee on Education

A. There is hereby created a committee on education, the purpose of which is to provide a liaison with the Louisiana universities providing courses in interior design and their students in interior design.

B. The chairman shall appoint the members of the committee on education.

C. The chairman shall designate the mission of the committee on education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3174.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners of Interior Designers, LR 34:

Family Impact Statement

The proposed amendments 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, 2008, to Sandy Edmonds, Board of Examiners of Interior Designers, 5222 Summa Court, Suite 358, Baton Rouge, LA 70809.

Sandy Edmonds
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Interior Designers

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

The proposed rule change will have no impact on state or local government expenditures.

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

The proposed rule change will result in an increase in licensing revenue to the board of $11,250 based on an increase in licensing fees from $125 annually to $150 annually for each of the 450 existing licensees.

In addition, the proposed rule change will increase the continuing education review fee for commercial providers from $25 to $100 for an estimated $225 increase based on the existing year's number of courses reviewed.

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

The proposed rule change will result in an increase in licensing fees from $125 to $150 annually for all licensees. In addition, the rule change will result in an increase in continuing education review fees for commercial providers from $25 per course to $100 per course.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition or employment.

Sandy Edmonds	H. Gordon Monk
Executive Director	Legislative Fiscal Officer
0806#055	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Board of Home Inspectors

Home Inspectors Training
(LAC 46:XL.117)

Editor's Note: This Notice of Intent is being repromulgated to correct an error upon submission. The original proposed Rule may be viewed in the April 20, 2008 edition of the *Louisiana Register* on pages 780-781.

The Board of Home Inspectors proposes to amend LAC 46:XL.117, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Home Inspector Licensing Law, R.S. 37:1471 et seq. The proposed text is being amended and adopted to provide additional revenue for the board during this period of a slumped housing market. The proposed Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed amended Section is set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XL. Home Inspectors
Chapter 1. General Rules
§117. Fees; Submission of Report Fees; Timeliness of Filings

A. Fees charged by LSBHI are as follows:

1. - 6. …

7. Inspection Report $ 7

B. Each home inspection performed by an inspector under this law shall be subject to a $7 state inspection fee per home inspection. This fee is to be made payable to the LSBHI and is to be remitted monthly in the following manner.

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477, and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 34:

Interested parties may submit written comments to Don Lewis, Chief Operating Officer, Louisiana State Board of Home Inspectors, 4668 Jamestown Avenue, Suite 220, Baton Rouge, LA, 70898, or by facsimile to (225) 248-1335. Comments will be accepted through the close of business July 10, 2008. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on July 25, 2008 at 10 a.m. at the Office of the State Board of Home Inspectors, 4664 Jamestown, Suite 220, Baton Rouge, LA.

Albert J. Nicaud
Board Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Home Inspectors Training

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

The board expects minimal costs associated with the publication of the Amendments and adopted rules. Licensees and the interested public will be informed of these rule changes via the Board's regular newsletter, direct mailings, website postings or other means of communication at a minimal cost.

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

There will be an effect on revenue collections of state or local governmental units resulting from the two dollar per inspection increase in fees resulting from the amendment. The Board of Home Inspectors is self funded and relies primarily on revenues from home inspections. Its budget is subject to significant shortfalls during periods of slow housing markets. This increased cost will allow the Board to balance its operating budget which has suffered a short fall this past fiscal year. Without the small increase, the Board projects another shortfall in its 2008 fiscal year.

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

There will be an increased cost to the consumer of two dollars per home inspection.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact on competition and employment anticipated as a result of the proposed rule changes.

Albert J. Nicaud	H. Gordon Monk
Board Attorney	Legislative Fiscal Officer
0806#077	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
State Racing Commission

Equine Veterinary Practices, Health, and Medication
(LAC 35:I.Chapters 15-17, III.3709, V.6301, 6353
and LAC 46:XLI.101, 105, 305, XLI.Chapter 15)

The Louisiana State Racing Commission hereby gives notice that it intends to amend LAC 35 and LAC 46 to promote the health and well being of race horses, to guard the integrity of the sport, and to adjust to changes in nation-wide standards in the realm of equine veterinary practices, health, and medication.

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

Title 35
HORSE RACING
Part I. General Provisions
Chapter 15. Permitted Medication

§1503. Anti-Ulcer Medications

A. One of the following anti-ulcer medications are permitted to be administered, at the stated dosage, up to 24 hours prior to the race in which the horse is entered.

1. Cimetidine (Tagamet®)—8-20 mg/kg PO BID-TID;
2. Omeprazole (Gastrogard®)—2.2 grams PO SID;
3. Ranitidine (Zantac®)—8 mg/kg PO BID.

B. Thresholds for the regulation of the dose and 24-hour withdrawal of these substances will be based of blood levels derived form data taken from the current scientific literature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Division of Administration, Racing Commission, LR 34:

§1505. Nonsteroidal and/or Anti-Inflammatory Medication

A. No nonsteroidal and/or anti-inflammatory medication may be administered to or used on a horse in training and eligible to be raced at a race meeting in this state except by a licensed veterinarian or a licensed trainer, or under his or her personal order; provided, however, that any such medication given hypodermically may only be administered by a licensed veterinarian.

B. In addition to any other urine or blood specimens required to be tested and analyzed, the stewards may order the taking of a blood specimen from any horse from which a urine specimen has been taken or will be taken while the horse is at the special barn and/or test barn as provided in §5761 which blood specimen shall be delivered to the state chemist for testing and analysis

C. The use of one of three approved nonsteroidal and/or anti-inflammatory (NSAID) medication shall be permitted under the following conditions:

1. not to exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

a. phenylbutazone (or its metabolite oxyphenylbutazone)—5 micrograms per milliliter; if selected for use 48 hours out, the blood threshold is 1.0 ug/ml;

b. flunixin—50 nanograms per milliliter; if selected for use 48 hours out, the blood threshold is 2.0 ng/ml;

c. ketoprofen—10 nanograms per milliliter; if selected for use 48 hours out, the blood threshold is 0.5 ng/ml;

2. these or any other NSAID is prohibited to be administered within the 24 hours before post time for the race in which the horse is entered;

3. the presence of more than one of the three approved NSAIDs, with the exception of Phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

NOTE: the use of any of the approved NSAIDs in a multi-day, multi-dose regimen will lead to drug accumulation. To avoid positives, longer withdrawal times should be observed. The use of other NSAIDs such as naproxen, is not recommended. If used as therapeutic, other NSAIDs should be withdrawn for at least two weeks prior to the scheduled race date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 9:547 (August 1983), amended by the Division of Administration, Racing Commission, LR 34:

§1507. Bleeder Medication

A. No bleeder medication may be administered to a horse in training for a race during any race meeting except upon compliance with the following.

1. Only a licensed veterinarian may prescribe, dispense and administer bleeder medication.

2. No horse entered to race may be administered bleeder medication within four hours of post-time of the race in which the horse is to run.

3. Bleeder medication shall only be administered on association grounds.

B. A horse shall be considered a known bleeder when:

1. it is observed bleeding by a commission veterinarian during and/or after a race or workout;

2. an endoscopic examination authorized by the commission veterinarian or state steward, conducted within one hour of a race or workout, reveals blood in the trachea and/or upper respiratory tract of the horse examined;

3. a statement from a commission veterinarian of any other racing jurisdiction, confirming that a specific horse is a known bleeder is received by the commission or stewards having jurisdiction of the race meeting where such horse may be eligible to race.

C. A horse may be removed from the bleeder list only upon the direction of a commission veterinarian, who shall certify in writing to the stewards the recommendation for removal.

D. The commission veterinarian at each race meeting shall maintain a current list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or

after a race or workout as observed by the commission veterinarian.

E. A bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to run during the following periods of time:

1. first time, for 14 days;
2. second time, within a 365 day period, for 30 days;
3. third time, within 3655 day period, for 180 days;
4. fourth time, within a 365 day period, lifetime suspension;
5. should a horse which is on the bleeder list race three times within 365 days without bleeding, it shall be considered a first-time bleeder when next it is observed bleeding by a commission veterinarian or an endoscopic examination, conducted within one hour of a race, reveals blood in the trachea and/or upper respiratory tract;
6. for the purposes of this rule the period of ineligibility on the first day bleeding was observed;
7. the voluntary administration of bleeder medication without evidence of an external bleeding incident does not subject a horse to the above periods of ineligibility.

F. The licensed veterinarian prescribing, dispensing, and administering bleeder medication must furnish a written report to the commission veterinarian at least one hour prior to post-time for the first race of the day on forms supplied by the commission. Furnishing of such written report timely shall be the responsibility of the prescribing, dispensing, and/or administering veterinarian. The following information shall be provided, under oath, on a form provided by the commission:

1. the name of the horse, racetrack name, the date and time the permitted bleeder medication was administered to the entered horse;
2. the dosage amount of bleeder medication administered to the entered horse; and
3. the printed name and signature of the licensed veterinarian who administered the bleeder medication.

G. Approved bleeder medication may be voluntarily administered intravenously to a horse, which is entered to compete in a race subject to compliance with the following conditions:

1. the trainer and/or attending veterinarian determine it is in a horse's best interests to race with bleeder medication, and they make written request upon the commission veterinarian, using the prescribed form, that the horse to be placed on the voluntary bleeder medication list;
2. the request is actually received by the commission veterinarian or his/her designee by the time of entry;
3. the horse race with bleeder medication and remain on the voluntary bleeder medication list unless and until the trainer and attending veterinarian make a joint, written request on a form provided by the commission to the commission veterinarian to remove the horse from the list;
4. once removed from the voluntary bleeder medication list, a horse may not be voluntarily placed back on the list for a period of 60 days unless the commission veterinarian determines on recommendation and concurrence of the attending veterinarian that it jeopardizes the welfare of the horse. Once a horse is voluntarily removed from the list twice within a 365-day period, the horse may not be voluntarily placed back on the list for bleeder medication for a period of 90 days.

H. In order to insure that the use of bleeder medication is reported accurately, the commission shall have the right to perform or have performed testing of blood or urine of any horse eligible to race at a meeting, whenever it is deemed necessary by it or its stewards. The veterinarian administering the approved bleeder medication shall surrender the syringe used to administer such medication for testing upon request of the commission veterinarian, a steward or either of their designated representatives.

I. Post race analysis of fursoemide must show detectable concentrations of the drug in serum, plasma or urine sample that is indicative of appropriate administration.

1. Specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. Specific gravity shall not be below 1.010. If the specific gravity of the urine is below 1.010 or a urine sample is unavailable for testing, quanitation of furosemide shall be performed on in serum or plasma.
2. Quantitation of furosemide in serum or plasma may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 9:547 (August 1983), amended by the Department of Economic Development, Racing Commission LR 15:7 (January 1989), LR 22:12 (January 1996), LR 23:950 (August 1997), amended by the Division of Administration, Racing Commission, LR 34:

§1509. Definitions

A. As used in this rule:

Bleeder Medication—drugs or medications which are permitted by the commission and are recognized by the veterinary profession for the treatment of exercise-induced hemorrhage.

Permitted Medication—Furosemide, by single intravenous injection not less than 150 mg and not exceed 500 mg:

a. approved adjunct, bleeder medications: Ethacrynic Acid, Bumetanide, Estrogen, Ergonovine, Amino Caproic Acid, Carbazochrome.

Veterinarian—a person who is licensed to practice veterinary medicine in Louisiana, and who is licensed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 9:548 (August 1983), amended by the Division of Administration, Racing Commission, LR 34:

Chapter 17. Corrupt and Prohibited Practices

§1707. United States Food and Drug Administration Approval

A. Any substance or material for human or animal use, ingestion or injection, or for testing purposes that is not formally approved by the United States Food and Drug Administration is prohibited.

B. The possession of any such substance that has not been approved by the United States Food and Drug Administration on the premises of a racetrack is strictly prohibited in the absence of prior, written permission of the commission or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:448 (December 1976), amended LR 3:44 (January 1977), LR 4:287 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1715. Stimulant; Substances

A. A stimulant, a depressant, a local anesthetic shall mean such substances as are commonly used by the medical and veterinary professions to produce such effects, and which are defined as such in accepted scientific publications.

B. The possession or use of any drug, medication or substance for which there is no recognized analytical method developed to detect and confirm the administration or presence of such substance in a horse; or the use of such substance in a manner which may endanger the health and welfare of the horse, the safety of a rider, or adversely affect the integrity of racing within the confines of a race track or within its stables, buildings, sheds or grounds, or within auxiliary (off-track) stable area, where horses are kept which are eligible to race is strictly prohibited.

C. The possession and/or use of blood doping agents on these premises is prohibited. These agents include, but are not limited to the following:

1. Erythropoietin;
2. Darbepoetin;
3. Oxyglobin®; and
4. Hemopure®.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:448 (December 1976), amended LR 3:44 (January 1977), LR 4:287 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1716. Human Recombinant Erythropoietin and/or Darbepoietin; Out of Competition Testing for Blood and/or Gene Doping

A. The possession and/or use of human recombinant erythropoietin and/or darbepoietin is strictly prohibited, and shall be classified as an RCI Category I substance. Every horse eligible to race in Louisiana is subject to random testing for these and other substances.

B. Any horse kept on the grounds of a racetrack or auxiliary (off-track) stable area or which is under the supervision, care and control of a licensed trainer, which is eligible to race, but out of competition, is subject to testing for blood and/or gene doping agents. Horses may be selected for testing at random or at the direction of the commission. Specimens collected for testing shall be sent to the state chemist for analysis under the *Rules of Racing* and reported upon. These substances and practices are defined as:

1. *blood doping agents*—the use of possession of any substance that abnormally enhances the oxygen of body tissues, including, but not limited to Erthropoietin (EPO), Darbepoetin, Oxyglobin, Hempure, Aransep;

2. *gene doping*—the non-therapeutic use of genes, genetic elements, and/or cells that have the capacity to enhance athletic performance or produce analgesia.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission LR 31:3160 (December 2005), amended LR 34:

§1717. Use of Drug Affecting Performance

A. The use of a stimulant, depressant, or anesthetic in a manner that might affect, or tend to affect, the racing performance of a horse is prohibited. (Stimulants and depressants are defined as medications, which stimulate or depress the circulatory, respiratory, or central nervous systems.)

B. The following substances are recognized environmental contaminants because they are endogenous to the horse, found in plants grazed or harvested as equine feed, or commonly found in equine feed due to the cultivation, processing, treatment, storage or transportation. Detection of these substances in post race analysis at or below the following thresholds may not be considered a violation of this Chapter:

1. caffeine, 25 ng/ml in blood or 100 ng/ml in urine;
2. cocaine, <1 ng/ml in blood or 150 ng/ml in urine:
   a. (Benzoyl Ecgonine Metabolite);
3. morphine, <1 ng/ml in blood or 120 ng/ml in urine;
4. lidocaine, <1 ng/ml in blood or 25 ng/ml in urine;
5. strychnine, 100 ng/ml in urine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:448 (December 1976), amended LR 3:44 (January 1977), LR 4:287 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1721. Modern Therapeutic Measures

A. Full use of modern therapeutic measures for the improvement and protection of the health of a horse is authorized. However, no medication, including any prohibited drug, permitted medication, chemical or other substance, or any therapeutic measure may be administered, caused to be administered or applied by any means to a horse during the 24-hour period before post time for the race in which the horse is entered unless otherwise permitted by rule.

B. The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted except under the following conditions.

1. The horse shall not be entered to race for 10 days following treatment.

2. Treatment by Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines is limited to veterinarians licensed to practice by the commission and must be reported not later than 48 hour post treatment.

3. Treatment by Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy at the racetrack is subject to advance notice and approval by the stewards. A log shall be maintained of each treatment at the racetrack, the date, time, and name of horse treated.

C. The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited absent the prior, written permission of the commission veterinarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), LR 6:174 (May 1980), LR 6:543 (September 1980), amended by the Division of Administration, Racing Commission, LR 34:

§1723. Personal Veterinary Records

A. Personal veterinary records, which accurately record all medications, shall be maintained by veterinarians, owners, trainers, and/or authorized personnel and will be made available to racing officials on request.

B. All veterinarians licensed by the commission who treat horses entered to race shall maintain an individual daily record of all medications administered or prescribed, all procedures performed, or treatment rendered to any horse entered to race. The daily record shall specify the day, the date, the name of the horse, the trainer's name, any medication, drug or substance administered or prescribed to the horse and/or any procedure performed on the horse on that date and the time administered or performed. The name of the attending or prescribing veterinarian must be clearly printed at the bottom of each page of the daily record, and the record must be personally dated and signed by the attending veterinarian. All daily records must be available to the stewards or commission veterinarian upon request. Failure to maintain accurate daily records may subject the veterinarian to a fine and/or suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:153.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1729. State Chemist Report

A. When a report is received from the state chemist reflecting in his expert opinion that the chemical analysis of blood, saliva, urine, or other samples taken from a horse indicated the presence of a prohibited narcotic, stimulant, depressant or analgesic, local anesthetic or drugs of any description, this shall be taken as prima facie evidence that such has been administered to the horse. Such shall also be taken as prima facie evidence that the owner and/or trainer and/or groom has been negligent in handling of the horse.

B. Prohibited substances include, but are not limited to, the following:

1. drugs or medications for which no acceptable threshold concentration has been established;

2. therapeutic medications in excess of established threshold concentrations;

3. substances present in a horse in excess of concentrations at which such substances could occur naturally; and

4. substances foreign to a horse at concentrations that cause interference with an analytical process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1731. Defenses to Report

A. The owner and/or trainer and/or groom and/or other person shall be permitted to interpose reasonable and legitimate defenses before the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission, 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1735. Trainers Responsible for Condition of Horse

A. The trainer and/or assistant trainer shall be responsible for and be the absolute insurer of the condition of the horses entered regardless of acts of third parties. Trainers and/or assistant trainers are presumed to know the rules of the commission.

B. The trainer is responsible for the presence of any drug or medication detected in the horse, whether prohibited or permitted. A positive test reported by the state chemist for a prohibited drug, medication or substance, including permitted medication in impermissible concentrations, is prima facie evidence of a trainer's negligence. In the absence of substantial evidence to the contrary, the trainer shall be strictly liable for the condition of the horse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:287 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1743. Possession of Drugs, Syringes or Needles

A. No person shall have in his possession, within the confines of a race track or within its stables, buildings, sheds or grounds, or within an auxiliary (off-track) stable area, where horses are lodged or kept which are eligible to race over a race track of any association holding a race meeting, any prohibited drugs, hypodermic syringes or hypodermic needles or similar instruments which may be used for injection. Any person with a medical condition that requires a hypodermic syringe must give notice to the stewards for an exemption from this rule, which notice must have attached thereto a medical explanation from the treating physician supporting, and must comply with any conditions and/or restrictions prescribed by the stewards or the commission.

B. This rule shall not apply to veterinarians licensed by the commission. However, licensed veterinarians may only use one-time, disposable, hypodermic needles and syringes. Disposal of all used, hypodermic needles and syringes in a manner consistent with the *Louisiana Veterinary Practice Act* is the personal responsibility of the licensed veterinarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), LR 4:288 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 16:765 (September 1990), amended by the Division of Administration, Racing Commission, LR 34:

§1788. Physical Examination of Horse

A. Every horse entered to race shall be subject to a veterinary examination conducted under the supervision and authority of a commission veterinarian which examination shall be attended by the trainer or his designated representative. The examination shall be conducted in accordance with recommendations of the American Association of Equine Practitioners and shall include, but not be limited to the following:

1. proper identification of each horse inspected;
2. observation of each horse in motion if it is:
   a. a first time starter;
   b. first start after being on a veterinarian's list;
   c. first start after 60-day lay off or;
   d. has dropped 50 percent or greater in claiming price;
3. manual palpation, when indicated;
4. close observation in paddock, saddling area, post parade and loading in starting gate; and
5. any other observation, exercise or examination deemed necessary by the examining veterinarian.

B. Every horse who is injured while in training or in competition and who subsequently expires or is destroyed is subject to a post-mortem examination. Every horse, which expires while stabled at the racetrack or licensed training facilities, may be subject to a postmortem examination. For purposes of a postmortem examination, the commission may take possession of the horse upon death. Upon completion of a postmortem examination, the carcass shall be released to the owner for disposal in accordance with state law. Postmortem examination may include, but not be limited to, the collection of blood, urine, other bodily fluid, or tissue specimen for analysis. The detection of a drug, medication or other substance in a horse postmortem may constitute a violation under the *Rules of Racing*. Trainers and owners shall comply with all reasonable measures to facilitate a postmortem examination of a horse. The commission shall make all reasonable effort to coordinate the postmortem examination with the trainer and/or owner and address issues related to insurance and policies of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by Division of Administration, Racing Commission, LR 34:

§1795. Classification of Foreign Substances by Category

A. Prohibited drugs and prohibited substances are classified in the appropriate one of five classes.

B. Known and identified prohibited drugs and substances are classified and listed according to their appropriate class as defined in the Association of Racing Commissioners International, Inc. Drug Testing and Quality Assurance Program's *Uniform Classification Guidelines for Foreign Substances*.

1. Category I includes any drugs, which have no recognized therapeutic use in a racehorse, and includes U.S. Drug Enforcement Agency DEA schedule I and II drugs.

2. Category II includes drugs which may include lesser drugs which have no accepted therapeutic value to a horse or which, notwithstanding a recognized therapeutic value, should not be present in a racehorse.

3. Category III includes drugs which may have a recognized therapeutic value to a horse, but which have the potential of affecting the performance of a horse.

4. Category IV includes therapeutic medications, which are routinely administered to equines and have a lesser ability to affect performance.

5. Category V includes therapeutic medications and/or substances routinely administered or given to horses and is not considered to affect performance of a horse when detected at or below certain threshold values.

C. Unknown or unidentified drugs or substances, which are prohibited but not listed, shall be appropriately classified by the state chemist upon discovery or detection. A supplemental listing of the appropriate classification of such discovered or detected drugs shall be maintained at the domicile office and be made available to the public upon request. A prohibited drug or substance remains prohibited regardless of whether it is listed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 19:613 (May 1993), amended by the Division of Administration, Racing Commission, LR 34:

§1797. Penalty Guidelines

A. Upon finding a violation by a permittee of prohibited medication rules, of prohibited substance rules, or of improper or excessive use of permitted medications, the stewards, or the commission, shall consider the classification level as set forth in §1795 and will, in the absence of mitigating or aggravating circumstances, endeavor to impose penalties and disciplinary measures consistent with the recommended guidelines contained herein. The stewards shall consult with a commission veterinarian to determine whether the violation was a result of an administration of a therapeutic medication. The stewards may consult with the state chemist to determine the severity of the violation. Whenever a majority of the stewards find or conclude that there are mitigating or aggravating circumstances, they should so state in their ruling such finding or conclusion, and should impose the penalty which they find is appropriate under the circumstances to the extent of their authority or, if necessary, refer the matter to the commission with specific recommendations for further action. The following factors may be considered as a mitigating or aggravating circumstance, which may substantiate a greater or lesser penalty:

1. past record of the trainer, veterinarian and owner;
2. the degree to which the drug or substance affected or could have affected performance, and/or the concentration of the drug or substance in blood and/or urine;
3. availability of the drug or substance;
4. existence of discernable evidence that the party knew of the administration of the drug and/or intentionally administered or caused to be administered the drug or substance;
5. practices, policies or procedures utilized to guard the horse;
6. probability of environmental contamination or inadvertent exposure due to human drug use;
7. whether the drug or medication detected was one for which the horse was prescribed;

8. betting patterns and/or suspicious betting patterns; and/or

9. whether the trainer was acting on the advice of a licensed veterinarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission LR 19:613 (May 1993), amended by the Office of the Governor, Division of Administration, Racing Commission LR 28:1014 (May 2002), LR 30:1017 (May 2004), amended by the Division of Administration, Racing Commission, LR 34:

Part III. Personnel, Registration and Licensing

Chapter 37. Veterinarians

§3709. Restriction of Practice

A. No veterinarian employed by the commission or by an association shall be permitted, during the period of his employment, to treat or prescribe for any horse on the grounds or registered to race at any race track, for compensation or otherwise, except in case of emergency, in which case a full and complete report shall be made to the stewards. No owner or trainer shall employ or pay compensation to any such veterinarian, either directly or indirectly, during the period for which he is employed by the commission or an association.

B. No veterinarian licensed by the commission shall have contact with any entered horse on race day except to perform a physical examination or to administer furosemide and/or a permitted adjunct bleeder medication unless prior notice is given to the commission veterinarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:428 (December 1976), amended LR 3:24 (January 1977), LR 4:274 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

Part V. Racing Procedures

Chapter 63. Entries

§6301. Procedures

A. Entries and declarations shall be made in writing and signed by the owner or trainer of the horse, or his authorized agent or his subagent. Jockey agents may make entries for owners or trainers after presenting the stewards with written permission from the owners or trainers.

B. Any horse entered to run must be present on the grounds not less than five hours prior to the post time of the race they are entered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:436 (December 1976), amended LR 3:32 (January 1977), LR 4:279 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§6353. Entry after Excused

A. The entry of any horse which has been excused by the stewards from starting due to physical disability or sickness shall not be accepted until the expiration of three calendar days after the day the horse was excused.

B. The commission veterinarian shall maintain a veterinarian list of those horses determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or other medical condition. When a horse is placed on the veterinarian's list, the trainer of such horse shall be notified within 72 hours. A horse may not be removed from the veterinarian's list until the commission veterinarian opines that the horse has satisfactorily recovered its ability to compete and has had a veterinarian approved one-half mile workout. If a horse is placed on the veterinarian's list twice within a 12-month period, the horse may not be removed from the list until it has completed an approved 5/8 mile workout. A horse placed on the veterinarian's list shall be removed from the list only after having demonstrated to the satisfaction of the commission veterinarian that the horse is then raceably sound and in fit physical condition to exert its best effort in a race. A blood and/or urine post-work test sample may be taken from the horse and the provisions of the this rule may apply to such official workout in the same manner as to a scheduled race, except that the results of such blood and/or urine test shall not be used for any purpose other than to determine the fitness of the horse to race.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:437 (December 1976), amended LR 3:34 (January 1977), LR 4:280 (August 1978), LR 11:615 (June 1985), amended by the Department of Economic Development, Racing Commission, LR 14:702 (October 1988), LR 22:13 (January 1996), amended by the Division of Administration, Racing Commission, LR 34:

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLI. Horseracing Occupations

Chapter 1. Veterinarians

§101. Licensing Veterinarians

A. All veterinarians shall be licensed to practice under the laws of Louisiana. No owner or trainer shall employ a veterinarian not licensed by the commission. This rule shall apply to veterinarians treating horses stabled off the association grounds and registered to race at any track in the state of Louisiana under supervision of the commission. Any owner or trainer employing unlicensed veterinarians will be subject to a fine or suspension or both.

B. Except as otherwise provided by rule, only a veterinarian licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse which is eligible to race and kept at any race track or auxiliary (off-track) stable area.

C. These provisions shall not apply to the following substances in approved quantitative levels, if any, present in post-race analysis or except as they may interfere with post race analysis:

1. a recognized non-injectable nutritional supplement or other substance approved by a commission veterinarian;

2. a non-injectable substance on the direction or by prescription an attending veterinarian;

3. a non-injectable non-prescription medication or substance.

D. All veterinarians licensed to practice by the commission shall be subject to the supervisory control of a commission veterinarian and stewards while treating any horse eligible to race.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:150.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:427 (December 1976), amended LR 3:24 (January 1977), LR 4:273 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§105. Administration of Drugs; Hearing

A. All veterinarians administering drugs or other substances to horses regulated by the commission shall be responsible to see that the drugs or other substances are administered in accordance with the provisions of the *Rules of Racing*. Should any specimen sample disclose the presence of any drug or substance prohibited by the *Rules of Racing*, the stewards or the commission may hold a hearing to determine whether the prohibited drug or substance was received by or administered to the horse in question by any veterinarian in violation of the *Rules of Racing*. If it is determined that a violation occurred, the stewards or commission will apply such sanctions, by fine and/or suspension of license, as is deemed appropriate.

B. Any veterinarian found to have violated these provisions or any other provision under the *Rules of Racing* may be subject to penalty on the recommendation of a commission veterinarian.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 8:233 (May 1982), amended by the Division of Administration, Racing Commission, LR 34:

Chapter 3. Trainer

§305. Condition of Horse

A. A trainer is responsible for the condition of each horse trained by him.

B. A trainer's responsibility for the condition of the horse includes, but is not limited to the following:

1. maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

2. using only the services of veterinarians licensed by the commission;

3. maintaining the proper identity, custody, care, health and safety of a horse;

4. ensuring a horse's fitness to perform creditably under the conditions of the race entered;

5. ensuring that every horse entered to race is present at its assigned stall for pre-race examination and inspection for soundness five hours prior to post-time for the race in which the horse is entered;

6. ensuring that a horse is properly bandaged, shod and equipped;

7. bringing the horse to paddock in a timely manner;

8. personally attending, unless excused by the stewards, to the horse in the paddock and supervise the saddling thereof;

9. guarding the horse from exposure or administration to any drug, medication or substance, which would constitute a violation under the *Rules of Racing*;

10. promptly reporting to the stewards and commission veterinarian any knowledge, information or belief that a horse has been administered any drug, medication or substance in violation of the *Rules of Racing*;

11. having each horse tested for Equine Infectious Anemia (EIA) in accordance with applicable state law and/or the *Rules of Racing*;

12. possessing and/or having on file with the racing secretary a valid health certificate and valid negative Equine Infectious Anemia (EIA) test certificate for each horse;

13. promptly reporting to the identifier and racing secretary when a horse has been gelded or spayed and ensuring that such fact is designated on its certificate of registration;

14. promptly reporting to the racing secretary and commission veterinarian when a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is noted on its certificate of registration;

15. promptly reporting to commission veterinarian any disease or unusual incidence of communicable illness in any horse, which he trains;

16. promptly reporting any serious injury and/or death of a horse at a race track or auxiliary (off-track) track to the stewards and commission veterinarian and ensure compliance with all state law and *Rules of Racing* regarding post-mortem examinations;

17. accompanying, or appointing a delegate to accompany, the horse to the test barn and witness collection of blood and/or urine specimens.

C. A trainer whose horse has been claimed remains responsible for any violation of the *Rules of Racing* arising from the horse's participation in the race from which it was claimed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:150.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:430 (December 1976), amended LR 3:26 (January 1977), LR 4:275 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

Chapter 15. Vendors

§1501. License

A. All persons whose business or profession involves the selling or distribution of drugs, medications, pharmaceutical products, horse food or nutrients of any kid or tack equipment on the grounds of an association, including their employees, shall be approved by the association and licensed by, and subject to the authority of the commission.

B. No person on association grounds where horses are stabled or kept, excluding license veterinarians, shall have a drug, medication, chemical, foreign substances or other substance that is prohibited in a horse on race day in their possession, or in any area which that person has a right to occupy, or within their personal property effects or vehicle within their care, custody or control within the confines of a race track unless the product is labeled in accordance with the *Rules of Racing* as set forth in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148, R.S. 4:150, R.S. 4:151 and R.S. 4:169.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:436 (December 1976), amended LR 3:32 (January 1977), LR 4:279 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

§1503. Labeling

A. All drugs, medications, pharmaceutical products and any other substances of a similar nature possessed or used within the grounds of a racing association shall at all times bear appropriate labeling displaying the contests thereof.

B. All drugs or medications equines that require a prescription under any federal or state law must have been obtained by prescription from a licensed veterinarian and in accordance with the law. All prescribed medications must bear a label that is securely attached and clearly shows:

1. the name of the product;

2. the name, address and telephone number of the prescribing veterinarian;

3. the name of each patient (horse) for whom the product is prescribed;

4. the dose, dosage, duration or treatment and expiration date of the prescribed medication;

5. the name of the permittee (trainer) to whom the product was dispensed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:436 (December 1976), amended LR 3:32 (January 1977), LR 4:279 (August 1978), amended by the Division of Administration, Racing Commission, LR 34:

The domicile office of the Louisiana State Racing Commission is open from 8:30 a.m. to 5 p.m., and interested parties may contact Charles A. Gardiner III, executive director, or Larry Munster, assistant executive director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule through July 10, 2008, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Equine Veterinary Practices, Health, and Medication

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

There are no anticipated costs or savings to state or local governmental units associated with this rule, other than one-time costs directly associated with its publication. Funding and positions were provided in the 2007 Regular Session for these additional responsibilities.

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

The estimated effect on state revenue collections is anticipated to be positive. Any increase is indeterminable but not anticipated to be significant.

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

Passage of this rule could result in economic benefits to racing associations if wagering activity increases due to additional bettor confidence in horseracing. Any increase in benefits accruing to these associations is indeterminable but not anticipated to be significant.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Passage of this rule should not affect employment. However, it should place Louisiana tracks in a more favorable competitive environment with other tracks around the country.

Charles A. Gardiner III
Executive Director
0806#007

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Office of Financial Institutions

Compensatory Benefit Plan (LAC 10:XIII.801)

In accordance with the Louisiana Securities Law, R.S. 51:701 et seq., and particularly, R.S. 51:709(15), and the Louisiana Administrative Procedure Act, R.S.49:950 et seq., the commissioner of the Office of Financial Institutions hereby gives his Notice of Intent to adopt LAC 10:XIII.801, a Rule to establish an exemption for Compensatory Benefit Plan securities and transactions.

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC
Part XIII. Investment Securities
Subpart 1. Securities
Chapter 8. Compensatory Benefit Plans
§801. Compensatory Benefit Plan Exemption

A. By authority delegated to the commissioner in R.S.51:709(15) to promulgate rules thereunder, a security or transaction described in Subsection B is determined to be exempt from the registration requirements of R.S.51:705.

B. Offers or sales of a security by an issuer pursuant to a written compensatory benefit plan, including, without limitation, a purchase, savings, option, bonus, salary appreciation, profit-sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in Rule 230.701 under Section 28 of the Securities Act of 1933.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:709(15)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 34:

Family Impact Statement

Pursuant to R.S.49:972, and prior to adoption of the proposed Rule LAC:XIII.801, Compensatory Benefit Plan Exemption, the Office of Financial Institutions considered the impact of the proposed Rule, and found that the proposed Rule, if adopted, would have no effect on the stability of or the functioning of the family, the authority and rights of parents regarding the education and supervision of their children, family earnings and family budget, the behavior and personal responsibility of children, or the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons are invited to submit written comments on this proposed Rule, no later than 4:30 p.m., July 10, 2008, to Rhonda Reeves, Deputy Commissioner of Securities, P.O. Box 94095, Baton Rouge, LA, 70804-9095, or by hand delivery to the Office of Financial Institutions,

8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809-7024.

John Ducrest
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Compensatory Benefit Plan

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

The proposed rule will have no implementation costs or savings to the state of Louisiana or any other 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 for the state of Louisiana or any other governmental unit.

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

The proposed rule provides a self-executing exemption from registration for certain securities issued under compensatory employee benefit plans, provided that such securities are exempt under federal regulations. Implementation of this rule will provide an economic benefit to the issuers of such securities since they will no longer be required to file documents with this office.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not expected to have any impact on competition and employment in the public or private sector.

John Ducrest, CPA
Commissioner
0806#052

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Office of Financial Institutions

Third-Party Solicitor Exemptions
(LAC 10:XIII.1301 and 1311)

In accordance with the Louisiana Securities Law, R.S.51:701 et seq., and particularly, R.S.51:703(D)(2)(a), and the Louisiana Administrative Procedure Act, R.S.49:950 et seq., the Commissioner of the Office of Financial Institutions hereby gives his Notice of Intent to amend LAC 10:XIII.1301 and 1311 to provide an exemption for Third-Party Solicitors from the examination requirements established in LAC 10:XIII, Chapter 13.

Title 10
FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC
Part XIII. Investment Securities
Subpart 1. Securities
Chapter 13. Investment Adviser Registration Procedure

§1301. Definitions

A. ...

B. *Third-Party Solicitor*—an investment adviser representative who meets all of the following criteria:

1. investment advisory business consists solely of referring individuals to other investment adviser firm(s);

2. provides no advice to individuals regarding specific investments;

3. fees consist entirely of referral fees received from the investment adviser firms to whom the investment adviser representative makes referrals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D)(2)(a).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2055 (November 2006), effective January 1, 2007, amended LR 34:

§1311. Exemptions

A. ...

B. The requirements of this rule shall not apply to third-party solicitors.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:703(D)(2)(a).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:2056 (November 2006), effective January 1, 2007, amended LR 34:

Family Impact Statement

Pursuant to R.S.49:972, and prior to amendment of the proposed Rule LAC:XIII.1301 and 1311, Third-Party Solicitor Exemption, the Office of Financial Institutions considered the impact of the proposed Rule, and found that the proposed Rule, if adopted, would have no effect on the stability of or the functioning of the family, the authority and rights of parents regarding the education and supervision of their children, family earnings and family budget, the behavior and personal responsibility of children, or the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons are invited to submit written comments on this proposed Rule, no later than 4:30 p.m., July 10, 2008, to Rhonda Reeves, Deputy Commissioner of Securities, P.O. Box 94095, Baton Rouge, LA, 70804-9095, or by hand delivery to the Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809-7024.

John Ducrest
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Third-Party Solicitor Exemptions

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

The proposed rule amendment will have no implementation costs or savings to the state of Louisiana or any other governmental unit.

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

The proposed rule amendment will have no effect on revenue collections for the state of Louisiana or any other governmental unit.

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

The proposed amendment to the Investment Adviser Registration Procedure rule provides an exemption from the examination/certification requirements for investment adviser representatives that act solely as third-party solicitors (as

defined). This will provide an economic benefit to these individuals since they will not have to take an examination or obtain a certification, which can cost between $120 and $1,000. The proposed amendment may have a negative impact on the organizations that issue the certifications, since these fees will not be paid to them. However, this impact will be minimal since there are only approximately 10 third-party solicitors in the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment is not expected to have any impact on competition and employment in the public or private sector.

John Ducrest, CPA	H. Gordon Monk
Commissioner	Legislative Fiscal Officer
0806#051	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Pharmacy

Controlled Dangerous Substances
(LAC 46:LIII.Chapters 25, 27, and 31)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Pharmacy Practice Act (R.S. 37:1161 et seq.), and the Uniform Controlled Dangerous Substances Law (R.S. 40:961 et seq.), the Louisiana Board of Pharmacy hereby gives notice of its intent to repeal a portion of existing rules (Subchapter D of Chapter 25), to re-designate the current contents of Chapter 27 (Illegal Payments; Required Disclosures of Financial Interests) as Chapter 31 of the same title, and then to promulgate a new chapter of rules (Chapter 27, Controlled Dangerous Substances). Act 834 of the 2006 Louisiana Legislature transferred the authority for the issuance and regulation of Controlled Dangerous Substance (CDS) licenses from the Health Standards Section of the Department of Health and Hospitals to the Board of Pharmacy. Since that time, the rules promulgated by the department (LAC 48:I.3900 et seq.) and the Board of Pharmacy (LAC 46:LIII.Subchapter D of Chapter 25) have remained in place. The board now seeks to consolidate all rules relevant to controlled dangerous substances in one new Chapter of rules (LAC 46:LIII.Chapter 27).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 25. Prescriptions, Drugs, and Devices
Subchapter D. Controlled Dangerous Substances

§2539. Controlled Dangerous Substances (CDS)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2107 (October 2003), effective January 1, 2004, repealed LR 34:

§2541. CDS License Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended 29:2108 (October 2003), effective January 1, 2004, repealed LR 34:

§2543. CDS Prescription/Order Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2108 (October 2003), effective January 1, 2004, repealed LR 34:

§2545. CDS Dispensing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2110 (October 2003), effective January 1, 2004, repealed LR 34:

§2547. CDS Record Keeping

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2110 (October 2003), effective January 1, 2004, repealed LR 34:

§2549. CDS Theft or Loss

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:

§2551. CDS Returns

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:

§2553. CDS Destruction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:

§2555. Pharmacy Termination or Transfer

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:

§2557. CDS Transfers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October

1988), effective January 1, 1989, amended LR 29:2111 (October 2003), effective January 1, 2004, repealed LR 34:

Chapter 27. Controlled Dangerous Substances

Subchapter A. General Provision

§2701. Definitions

A. Words not defined in this Chapter shall have their common usage and meaning as stated in the *Merriam-Webster's Collegiate Dictionary—Tenth Edition*, as revised, and other similarly accepted reference texts. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section unless the context clearly indicates otherwise.

Administer or A*dministration*—the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other means.

Agent—an individual who acts on behalf or at the direction of a manufacturer, distributor, or other licensee, but does not include a common or contract carrier, public warehouseman, or employee thereof.

Ambulatory Surgical Center or *Surgical Center*—a facility licensed by the department to operate as an ambulatory surgery center.

BNDD—United States Bureau of Narcotics and Dangerous Drugs.

Board—the Louisiana Board of Pharmacy.

Central Fill Pharmacy—a pharmacy which provides centralized dispensing services to other pharmacies, in compliance with the provisions of §1141 of the board's rules.

Certified Animal Euthanasia Technician—an individual authorized by law and certified by the Louisiana State Board of Veterinary Medicine to practice animal euthanasia.

Client Pharmacy—a pharmacy which has engaged the services of a central fill pharmacy.

Controlled Dangerous Substance or *Controlled Substance*—any substance defined, enumerated, or included in federal or state statute or regulations, 21 CFR §130811.15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled dangerous substance by amendment or supplementation of such regulations or statute. The term shall not include distilled spirits, wine, malt beverages, or tobacco.

CRT—cathode ray tube video display unit.

DEA—United States Drug Enforcement Administration.

Deliver or *Delivery*—the actual, constructive, or attempted transfer of a drug or device containing a controlled substance, from one person to another, whether or not for consideration, or whether or not there exists an agency relationship.

Dentist—an individual authorized by law and licensed by the Louisiana State Board of Dentistry to engage in the practice of dentistry.

Department—the Louisiana Department of Health and Hospitals.

Dispense or *Dispensing*—the interpretation, evaluation, and implementation of a prescription drug order for a controlled substance, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

Dispenser—an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to dispense drugs or devices containing controlled substances to his own patients in the course of professional practice.

Distribute or *Distributing*—the delivery of a drug or device containing a controlled substance in response to a non-patient specific purchase order, requisition, or similar communication, other than by administering or dispensing.

Distributor or *Wholesaler*—a facility authorized by law and licensed by the Louisiana State Board of Wholesale Drug Distributors to engage in the distribution of drugs or devices, including controlled substances.

Drug—

a. any substance recognized as a drug in the official compendium, or supplement thereto, designated by the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

b. any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or

c. any substance other than food intended to affect the structure or any function of the body of humans or animals.

Drug Detection Canine Trainer—an individual qualified to conduct experiments using controlled substances in training canines to detect the presence of contraband controlled dangerous substances.

Drug Detection Canine Handler—an individual qualified to handle canines in the detection of contraband controlled substances.

Electronic Prescription—a prescription generated, signed, and transmitted in electronic form.

Emergency Clinic—a facility staffed by at least one physician and other licensed medical personnel for the purpose of providing emergency medical treatment.

Facility—an organized health care setting authorized by law and licensed by the department to engage in the provision of health care.

Hospital—a facility licensed by the department to operate as a hospital.

License—a Louisiana Controlled Dangerous Substances (CDS) License.

Licensee—an individual or facility in possession of a Louisiana CDS license.

Manufacturer—a person authorized by law and licensed by the federal Food and Drug Administration to engage in the production of drugs, including controlled substances.

Narcotic Treatment Program—a program authorized by law and licensed by the department and the federal Drug Enforcement Administration to operate a substance abuse program using narcotic replacement procedures for individuals dependent upon opium, heroin, morphine, or any other derivative or synthetic drug in that classification of drugs.

Optometrist—an individual authorized by law and licensed by the Louisiana State Board of Optometry Examiners to engage in the practice of optometry.

Person—an individual, corporation, partnership, association, or any other legal entity, including government or governmental subdivision or agency.

Pharmacist—an individual authorized by law and licensed by the board to engage in the practice of pharmacy.

Pharmacy—a place authorized by law and permitted by the board to procure, possess, compound, distribute, and dispense drugs, including controlled substances.

Physician—an individual authorized by law and licensed by the Louisiana State Board of Medical Examiners to engage in the practice of medicine.

Podiatrist—an individual authorized by law and licensed by the Louisiana State Board of Medical Examiners to engage in the practice of podiatry.

Practice Affiliation—a practice relationship, collaboration, or practice under the supervision of a physician licensed to practice medicine, applicable to advanced practice registered nurses and physician assistants.

Practitioner—an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to prescribe and administer drugs in the course of professional practice.

Prescribe or *Prescribing*—to order a drug or device to be administered or dispensed to a specific patient.

Prescriber—an individual currently licensed, registered, or otherwise authorized by the appropriate licensing board to prescribe drugs in the course of professional practice.

Prescription or Prescription Drug Order—an order from a practitioner authorized by law to prescribe a drug or device that is patient specific and is to be preserved on file as required by law or regulation.

Researcher—an individual qualified to conduct medical, educational, or scientific experiments on animals, humans, or in laboratories which require the use of controlled substances. For the purpose of this Chapter, manufacturers which use controlled substances in the manufacturing process, but do not manufacture controlled substances as an end product, shall be considered researchers and not manufacturers as defined in R.S. 40:961(24).

Sales Representative or *Professional Medical Representative*—an individual employed by a manufacturer or distributor and authorized by the employer to receive, possess, and deliver controlled substances to a person licensed to possess controlled dangerous substances.

Veterinarian—an individual authorized by law and licensed by the Louisiana State Board of Veterinary Medicine to engage in the practice of veterinary medicine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2703. Controlled Substances

A. Classification

1. Controlled substances are specifically identified by reference, as provided in R.S. 40:961 et seq., or its successor, and 21 CFR §1308 et seq., or its successor. Schedules I, II, III, IV, and V shall, unless and until added to pursuant to R.S. 40:961 et seq., or its successor, consist of the drugs or other substances, by whatever official name, common or usual name, chemical name, or trade name designated, listed in R.S. 40:961 et seq., or its successor.

B. Schedules. Controlled substances are categorized into various schedules based upon the degrees of potential for abuse, as follows.

1. Schedule I:

a. the drug or other substance has a high potential for abuse;

b. the drug or other substance has no currently accepted medical use in treatment in the united states; and

c. there is a lack of accepted safety for use of the drug or other substance under medical supervision.

2. Schedule II:

a. the drug or other substance has a high potential for abuse;

b. the drug or other substance has a currently accepted medical use in treatment in the united states; or a currently accepted medical use with severe restrictions; and

c. abuse of the drug or other substance may lead to severe psychological or physical dependence.

3. Schedule III:

a. the drug or other substance has a potential for abuse less than the drugs or other substances listed in Schedules I and II above;

b. the drug or other substance has a currently accepted medical use in treatment in the united states; and

c. abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

4. Schedule IV:

a. the drug or other substance has a low potential for abuse relative to the drugs or other substances listed in schedule iii;

b. the drug or other substance has a currently accepted medical use in treatment in the united states; and

c. abuse of the drug or other substance may lead to limited psychological or physical dependence relative to the drugs or other substances listed in Schedule III.

5. Schedule V:

a. the drug or other substance has a low potential for abuse relative to the drugs or other substances listed in schedule iv;

b. the drug or other substance has a currently accepted medical use in treatment in the united states; and

c. abuse of the drug or other substance may lead to limited psychological or physical dependence relative to the drugs or other substances listed in Schedule IV.

C. Scheduling of Additional Controlled Substances. R.S. 40:963 authorizes the secretary of the department to add additional substances to the schedules identified in Subsection B. In making the determination to add a substance, the secretary is required to make certain findings, as identified in R.S. 40:963.

1. In determining whether a drug has a "stimulant effect" on the central nervous system, the secretary shall consider, among other relevant factors, whether there is substantial evidence that the drug may produce any of the following:

a. extended wakefulness;

b. elation, exhilaration or euphoria (exaggerated sense of well-being);

c. alleviation of fatigue;

d. insomnia, irritability, or agitation;

e. apprehension or anxiety;

f. flight of ideas, loquacity, hypomania or transient delirium.

2. In determining whether a drug has a "depressant effect" on the central nervous system, the secretary shall consider, among other relevant factors, whether there is

substantial evidence that the drug may produce any of the following:

a. calming effect or relief of emotional tension or anxiety;

b. drowsiness, sedation, sleep, stupor, coma, or general anesthesia;

c. increase of pain threshold;

d. mood depression or apathy;

e. disorientation, confusion or loss of mental acuity.

3. In determining whether a drug is "habit-forming," the secretary shall consider, among other relevant factors, whether there is substantial evidence that the drug may produce any of the following:

a. a psychological or physical dependence on the drug (compulsive use);

b. euphoria;

c. personality changes;

d. transient psychoses, delirium, twilight state, or hallucinations;

e. chronic brain syndrome;

f. increased tolerance or a need or desire to increase the drug dosage;

g. physical dependence or a psychic dependence evidenced by a desire to continue taking the drug for a sense of improved well-being that it engenders;

h. pharmacological activity similar or identical to that of drugs previously designated as habit-forming.

4. In determining whether a drug has a "hallucinogenic effect," the secretary shall consider, among other relevant factors, whether there is substantial evidence that the drug may produce hallucinations, illusions, delusions, or alteration of any of the following:

a. orientation with respect to time or place;

b. consciousness, as evidenced by confused states, dreamlike revivals of past traumatic events or childhood memories;

c. sensory perception, as evidenced by visual illusions, synesthesia, distortion of space and perspective;

d. motor coordination;

e. mood and affectivity, as evidenced by anxiety, euphoria, hypomania, ecstasy, autistic withdrawal;

f. ideation, as evidenced by flight of ideas, ideas of reference, impairment of concentration and intelligence;

g. personality, as evidenced by depersonalization and derealization, impairment of conscience and of acquired social and cultural customs.

5. The secretary may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

a. there is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community;

b. there is significant diversion of the drug or drugs containing such a substance from legitimate drug channels;

c. individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

d. the drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

D. Combination Drugs; Exemption from Certain Requirements. Pursuant to R.S. 40:965, the list of combination drugs and preparations exempted from the application of this Chapter shall be the List of Exempted Prescription Products as identified in the current Code of Federal Regulations, specifically at 21 CFR 1308.32.

E. Excepted Drugs; Exemption from Certain Requirements. Pursuant to R.S. 40:965, the list of excepted drugs and preparations which contain any depressant or stimulant substance listed in Subsections 1, 2, 3, or 4 of Schedule III shall be the List of Exempted Prescription Products as identified in the current Code of Federal Regulations, specifically at 21 CFR 1308.32.

F. Changes in the Schedule of Controlled Substances. Pursuant to changes in the schedule of a controlled substance by either the United States Drug Enforcement Administration or the state of Louisiana, all licensees shall adhere to the more stringent requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

Subchapter B. Licenses

§2705. Licenses and Exemptions

A. Every person who manufactures, distributes, prescribes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, prescribing, or dispensing of any controlled substance shall obtain a Controlled Dangerous Substance (CDS) License from the board prior to engaging in such activities. Only persons actually engaged in such activities are required to obtain a CDS license; related or affiliated persons, e.g., stockholder in manufacturing corporation, who are not engaged in such activities, are not required to be licensed. The performance of such activities in the absence of a valid CDS license shall be a violation of R.S. 40:973 and these rules.

B. The following persons are exempt from the CDS license requirements of this Chapter:

1. a manufacturer’s or distributor's workman, contract carrier, warehouseman or any employee thereof whose handling of controlled substances is in the usual course of his business or employment while on the premises of the employer or under direct transfer orders of the employer;

2. a person who obtains or possesses a controlled substance pursuant to a valid prescription, either for his own use or for the use of a member of his household or for the administration to an animal owned by him or a member of his household;

3. an agent or employee of any licensed manufacturer, distributor, dispenser or researcher in the course of his employment and only on the premises of his employer, but not a sales representative or professional medical representative.

C. Practitioners

1. The issuance of a CDS license to a practitioner, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential issued by a standing professional board in the state of Louisiana or other agency of competent jurisdiction.

2. For the purpose of prescribing controlled substances, a Louisiana CDS license issued to a practitioner shall be valid in any location in Louisiana; however, the procurement and possession of controlled substances shall require a separate CDS license for each such location where controlled substances are possessed.

3. A prescribing practitioner desiring to procure and possess controlled substances at only one location need only obtain a single CDS license.

4. A physician in possession of a valid, verifiable and unrestricted license to practice medicine issued by the Louisiana State Board of Medical Examiners may apply for and be issued a CDS license to authorize the prescribing of the following controlled substances classified in Schedule I: marijuana, tetrahydrocannabinols, and synthetic derivatives of tetrahydrocannabinols; provided however that such prescribing shall only be authorized for therapeutic use by patients clinically diagnosed with glaucoma, spastic quadriplegia, or symptoms resulting from the administration of cancer chemotherapy treatment.

D. Pharmacies

1. The issuance of a CDS license to a pharmacy, and the renewal thereof, shall require the possession of a valid and verifiable permit to operate a pharmacy issued by the board.

2. A Louisiana CDS license issued to a pharmacy shall be valid for the premises identified on the license.

3. The possession of controlled substances under the control of the pharmacy at a different location shall require a separate CDS license for each separate location.

E. Facilities. The issuance of a CDS license to a facility, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential issued by the department, or its successor.

F. Manufacturers and Distributors

1. The issuance of a CDS license to a manufacturer, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential from the Food and Drug Control Unit of the Office of Public Health in the Louisiana Department of Health and Hospitals, or its successor. Further, the applicant shall submit to an initial and periodic inspection by the board or its designee.

2. The issuance of a CDS license to a distributor, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential from the Food and Drug Control Unit of the Office of Public Health in the Louisiana Department of Health and Hospitals, as well as the Louisiana State Board of Wholesale Drug Distributors, or their successors. Further, the applicant shall submit to an initial and periodic inspection by the board or its designee.

3. The sale or transportation of controlled substances within the state of Louisiana by manufacturers located outside the state of Louisiana shall require the possession of a valid CDS license issued by the board prior to the engagement of such activities.

G. Researchers

1. The issuance of a CDS license to a researcher, and the renewal thereof, shall require the attachment to the application of a properly completed form supplied by the board describing the research, and further, when the research involves human subjects, the attachment to the application of proof of approval by the appropriate Institutional Review Board.

2. A determination of qualification shall be made by the board or its designee.

H. Drug Detection Canine Trainers/Handlers

1. The issuance of a CDS license to a drug detection canine trainer or handler, and the renewal thereof, shall require the attachment to the application of a properly completed form supplied by the board describing the policies and procedures for the use of controlled substances.

2. A determination of qualification shall be made by the board or its designee.

3. This Section shall not apply to a law enforcement agency or its personnel in the performance of its official duties.

I. Certified Animal Euthanasia Technician. The issuance of a CDS license to a certified animal euthanasia technician, and the renewal thereof, shall require the possession of a valid and verifiable license or other credential issued by the Louisiana Board of Veterinary Medicine, or its successor.

J. Professional Medical Representatives. The issuance of a CDS license to professional medical representative, and the renewal thereof, shall require the attachment to the application of written verification of employment from the manufacturer or distributor, as well as their authorization for the representative to receive, possess, and deliver controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2707. Licensing Procedures

A. Application for Initial Issuance of CDS License

1. An individual or other entity desiring to obtain a Louisiana CDS license shall complete the application form supplied by the board and mail it with the required attachments and appropriate fees, as set forth in R.S. 40:972 and R.S. 40:1013, to the board.

2. The applicant shall provide a complete street address reflecting the location where the applicant will engage in the activity for which a Louisiana CDS license is required. The board shall issue only one CDS license for each such location.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

4. Applicants not in possession of a valid and verifiable license or other credential from a standing professional board of the state of Louisiana, or from the Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards, or their successors, shall submit to a criminal history record check upon request by the board. The applicant shall pay for the cost of the criminal history record check. The board shall evaluate the findings of the report of the criminal history record check prior to the issuance of the CDS license.

5. An individual or other entity who knowingly or intentionally submits a false or fraudulent application shall be deemed to have committed a prohibited act under R.S. 40:961 et seq., or its successor.

6. A CDS license shall be valid for a period of one year, and shall expire annually on the date of initial licensure unless revoked sooner in accordance with the provisions of the Uniform Controlled Dangerous Substances Law or these rules. A licensee shall not engage in any activity requiring a valid CDS license while his license is expired.

7. Practitioners in possession of a temporary or restricted license issued by a standing professional board of competent jurisdiction in the state of Louisiana may be issued a temporary or restricted Louisiana CDS license adhering to the limitations or restrictions of their board license.

B. Application for Renewal of CDS License

1. A licensee shall complete the application for renewal of a CDS license and submit same to the board prior to the expiration date of the current license. The application shall be filed in such form and contain such data and attachments as the board may require and be accompanied by the appropriate fees, as set forth in R.S. 40:972 and R.S. 40:1013.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. A CDS license not renewed by the expiration date shall be classified as delinquent. The acceptance of an application for renewal of an expired CDS license received up to 30 days following the expiration date shall require the inclusion of the delinquent fee identified in R.S. 40:972 in addition to all other required fees.

4. A CDS license not renewed within 30 days following the expiration date shall be automatically terminated by the board. The reissuance of a terminated CDS license shall require compliance with the board's reinstatement procedures.

C. Application for Reinstatement of Terminated, Suspended, or Revoked CDS License

1. The applicant shall complete an application form for this specific purpose supplied by the board; the application shall require the inclusion of the annual renewal fee and delinquent fee identified in R.S. 40:972 and the program fee identified in R.S. 40:1013.

2. An application for the reinstatement of a terminated credential which has been expired:

a. less than one year may be approved by the board's administrative personnel;

b. more than one year but less than five years may be approved by a member of the board charged with such duties;

c. more than five years may only be approved by the full board following a hearing to determine whether the reinstatement of the credential is in the public's best interest.

3. An application for the reinstatement of a suspended or revoked CDS license may only be approved by the full board following a hearing to determine whether the reinstatement of the license is in the public's best interest.

D. Maintenance of CDS Licenses

1. A CDS license is valid only for the entity or person to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a license be valid for any premises other than the business location for which it is originally issued.

2. In order to maintain a CDS license, the applicant shall maintain a federal license required by federal law to engage in the manufacture, distribution, prescribing, or dispensing of controlled substances.

3. The licensee shall inform the board of any and all changes to its business location/address within 10 days, with documentation, attesting to any change of business location/address, with notice to include both the old and new address. A change in business address of a facility may require an inspection by the board or its designee.

4. A duplicate or replacement license shall be issued upon the written request of the licensee and a payment of the fee shall be charged as provided by R.S. 40:972. A duplicate or replacement license shall not serve or be used as an additional or second license.

5. A facility changing ownership shall notify the board in writing 15 calendar days prior to the transfer of ownership.

a. A change of ownership is evident under the following conditions:

i. sale;

ii. death of a sole proprietor;

iii. the addition or deletion of one or more partners in a partnership;

iv. bankruptcy sale; or

v. a 50 percent, or more, change in ownership of a corporation, limited liability company, or association since the issuance of the original CDS license.

b. The new owner(s) shall submit a properly completed application, with all required attachments and appropriate fee, to the board.

c. Upon the receipt of the new CDS license, the previous licensee shall:

i. notify the board of the transaction, including the identity of the new owner(s); and

ii. surrender his CDS license to the board.

d. A CDS license is not transferable from the original owner to a new owner.

e. A change in ownership may require an inspection by the board or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2709. Actions on Applications

A. Upon receipt of a properly completed application and appropriate fees from a qualified applicant, the board shall issue a Louisiana CDS license to the applicant, unless the board intends to deny the application.

B. The board may deny an application for the issuance or renewal of a CDS license for cause. For purposes of this Section, the term "for cause" includes surrender in lieu of, or as a consequence of, any federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2711. Actions on Licenses

A. The board may refuse to renew a CDS license, or may suspend or revoke an existing CDS license, if the licensee has violated, or been found guilty of violating, any federal or state laws or regulations relating to controlled substances.

B. Violations Committee

1. Informal Hearings. The violations committee of the board may conduct an informal non-adversarial hearing with a licensee properly noticed of the inquiry regarding the issues to be discussed. The committee shall receive information and deliberate as to a cause of action regarding a potential violation. By an affirmative majority vote of the committee members, they may recommend a course of action to the full board, or they may dismiss the allegations. Should the committee recommend a course of action to the full board, the committee members participating in that decision shall not be permitted to participate in subsequent formal administrative hearings pertaining to the complaint or alleged violation(s) heard by the committee, unless the licensee allows otherwise.

2. Interlocutory Hearings. By interlocutory, or summary, hearing, the committee may summarily suspend a CDS license prior to a formal administrative board hearing wherein, based upon the committee's judgment and reflected by adequate evidence and an affirmative majority decision, the licensee poses a danger to the public's health, safety, and welfare, and the danger requires emergency action.

a.. Summons Notice. A summary proceeding summons notice shall be served at least five days before the scheduled hearing to afford the licensee an opportunity to be heard with respect to a potential summary suspension action. The notice shall contain a time, place, nature, and the grounds asserted relative to the alleged conduct warranting summary suspension.

b. Burden of Proof. Legal counsel shall have the burden of proof to support the contention the public's health, safety, or welfare is in danger and requires summary or emergency action.

c. Evidence. The licensee shall have the right to appear personally, to be represented by counsel, or both, to submit affidavits, documentary evidence, or testimony in response to the cause of action asserted as the basis for the summary suspension.

d. Decision. The committee shall determine whether to grant or deny the request for summary suspension based upon adequate evidence with an affirmative majority vote substantiated by findings(s) of fact and conclusion(s) of law the public's health, safety, or welfare is in danger and requires emergency or summary action.

e. Report. The committee shall submit their findings and interlocutory decree to the board when rendered.

f. Suspensive Duration. The summary suspension decree shall be followed by a formal administrative hearing within 30 days from receipt of notice by the licensee.

C. Consent Agreements. A licensee may enter into a consent agreement with the board on any matter pending before the board. A consent agreement is not final until the board approves the consent agreement by an affirmative majority vote of the board. If the consent agreement is rejected in full or part, the matter shall be heard at the next regularly scheduled formal administrative hearing. However, nothing herein shall be construed to limit the board from modifying a consent agreement, with the licensee's approval, to include less severe sanctions than those originally agreed to in a pending consent agreement.

D. Formal Administrative Hearing

1. Authority. The board shall convene a formal administrative hearing pertaining to the ability to hold a CDS license, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., with authority to take disciplinary action pursuant to R.S. 40:975.

2. Ex-Parte Communication. Once a formal administrative hearing has been initiated and notice served, board members participating in the decision process shall not communicate with a licensee or a licensee's attorney concerning any issue of fact or law involved in the formal administrative hearing.

3. Notice. A formal administrative hearing may be initiated upon proper notice to a licensee and held at a designated time and place based upon the following grounds:

a. violation—sufficient evidence or a serious complaint of an alleged violation to require a formal hearing shall be directed to legal or special counsel for administrative prosecution to justify a formal hearing;

b. failure to respond—a failure by the licensee to respond to a violations committee informal hearing;

c. irresolvable issues—a violations committee informal hearing failed to resolve all issues and requires further formal action;

d. irreconcilable issues—an interlocutory hearing failed to resolve all pertinent pending issues thus requiring further formal action; or

e. reaffirmation—reaffirmation of an interlocutory decree;

f. requirement—a formal administrative hearing is required.

E. Formal Administrative Hearing Procedures

1. Hearing Officer. The presiding hearing officer may be the board president, a vice-president, or other individual appointed by the president or his successor. The hearing officer shall have the responsibility to conduct a fair and impartial proceeding with the administrative duty as well as the authority to:

a. convene a formal administrative hearing;

b. rule on motions and procedural questions arising during the hearing such as objections or admissibility of evidence or examination of witnesses;

c. issue or direct staff to issue subpoenas;

d. declare recess;

e. maintain order;

f. enforce a standard of conduct to insure a fair and orderly hearing; and

g. remove any disruptive person from the hearing.

2. Oaths. The presiding hearing officer, executive director, or other board designee may administer oaths.

3. Jury. The board, comprised of a quorum of members, shall serve as an administrative jury to hear and determine the disposition of the pending matter based on the finding(s) of fact and conclusion(s) of law by receiving evidence and reaching a decision and ordering sanctions by an affirmative majority record vote of board members participating in the decision process.

4. Hearing Clerk. The board's executive director shall serve as the hearing clerk and shall maintain hearing records.

5. Prosecutor. The legal or special counsel shall prosecute the pending matter.

6. Recorder. The board-designated stenographer shall record all testimony dictated and evidence received at the hearing. The utilization of recording equipment may be employed.

7. Agenda

a. Docket. Contested matters shall be identified by reference docket number and caption title.

b. Complaint. The complaint may be read, unless waived by the licensee.

8. Order

a. Opening Statements. An opening statement by legal or special counsel may present a brief position comment with an outline of evidence to be offered. The licensee or licensee's legal counsel may present an opening defense position statement.

b. Evidence

i. Testimony Received. Testimony shall be received under oath administered by the presiding hearing officer, the executive director, or other staff or board member designated by the hearing officer.

ii. Evidence Introduction. All parties shall be afforded an opportunity to present evidence on all issues of fact and argue on all issues of law and respond by direct testimony, followed with cross examination as may be required for a full and true disclosure of the facts. The direct presentation of evidence shall be introduced by the legal or special counsel and shall be followed by the licensee, either in proper person or by legal counsel, by direct cross-examination or rebuttal, or any combination thereof.

iii. Examination. Witnesses may be directly examined and cross-examined. Additionally, witnesses and licensees may be questioned by members of the jury on matters for clarification.

iv. Rule Interpretation. Liberal rules of evidence shall be employed by the presiding hearing officer to provide adequate facts and law necessary for the board to deliberate and decide each case. The board’s formal administrative hearing shall not be bound to strict rules of evidence.

v. Admissibility. Admissibility of evidence and testimony shall be determined by the presiding hearing officer as provided by law.

c. Closing Arguments. Closing arguments may be made by the licensee, either in proper person or by legal counsel, followed by closing arguments from the prosecuting legal or special counsel.

d. Board Decision. The board's decision shall be based on finding(s) of fact and conclusion(s) of law. The board's decision shall be based on a preponderance of the evidence presented at a formal administrative hearing, together with the board’s determination of appropriate sanctions, if any, by an affirmative majority record vote of the board members participating in the decision process. Decisions shall be recorded and made part of the record.

e. Board Order. The board's order shall be rendered at the formal administrative hearing or taken under advisement and rendered within 30 days after the hearing and then served personally or domiciliary at the licensee's last known address by regular, registered, or certified mail, or by diligent attempt thereof.

f. Finality of Board Order. The board's order shall become final and effective 11 days after licensee's receipt of the board's notice of its decision, provided an appeal is not filed.

F. Complaint Dismissal. The board may, in its discretion and based upon insufficiency of evidence, orally dismiss a pending matter, or parts thereof, at a formal administrative hearing.

G. Transcripts. A complete record of all formal administrative hearing proceedings shall be transcribed, maintained, and available upon written request for a minimum of three years after the date the pertinent board order is final. The board may require the advance payment of the appropriate fees to cover the cost of preparation of the requested transcript.

H. Contempt. The failure of a licensee or witness to comply with a board order, after being duly served, constitutes contempt and the board may petition a court of competent jurisdiction to rule the witness or licensee in court to show cause why he should not be held in contempt of court.

I. Rehearing

1. An aggrieved licensee may file a motion for rehearing in proper form, within 10 days, requesting reconsideration or a rehearing by the board or by the interlocutory hearing panel.

2. Grounds. The board or an interlocutory hearing panel may consider the motion for rehearing at the next regularly scheduled board meeting. The motion shall allege one or more of the following:

a. the board's decision was clearly contrary to the law or evidence;

b. newly discovered evidence not available at the time of the hearing which may be sufficient to reverse the board's decision;

c. issues not previously considered need to be examined; or

d. it is in the public interest to reconsider the issues and the evidence.

3. Time. The board or the hearing officer shall grant or deny the motion for rehearing within 30 days after its submission.

J. Judicial Review. An aggrieved licensee may appeal the board's decision to a court of competent jurisdiction within 30 days from the entry of the board order or the denial of the rehearing motion.

K. Cease and Desist Orders; Injunctive Relief

1. The board is empowered to issue an order to any person or facility engaged in any activity, conduct, or practice constituting a violation of the R.S. 40:972 et seq., or the regulations promulgated thereto, directing such person or facility to forthwith cease and desist from such activity, conduct, or practice.

2. If the person or facility to which the board directs a cease and desist order does not cease and desist the prohibited activity, conduct, or practice within the timeframe directed by said order, the board may seek, in any court of competent jurisdiction and proper venue, a writ of injunction enjoining such person or facility from engaging in such activity, conduct, or practice.

3. Upon proper showing of the board such person or facility has engaged in the prohibited activity, conduct, or practice, the court shall issue a temporary restraining order prohibiting the person or facility from engaging in the activity, conduct, or practices complained of, pending the hearing on a preliminary injunction, and in due course a permanent injunction shall be issued after a contradictory hearing, commanding the cessation of the finally determined unlawful activity, conduct, or practices identified in the complaint.

L. Reinstatement or Re-issuance of CDS License.

1. At any time after the suspension or revocation of a CDS license, the board may reinstate the license, but only at an official meeting of the board, after written notice, and by vote of an affirmative majority of the members of the board present and voting. In the event a license is reinstated or reissued following previously applied sanctions relative to a violation of this Chapter, said reinstatement or re-issuance shall have affixed thereto an attachment or addendum, specifically setting forth any restrictions placed upon said reinstated or reissued license by the board.

2. In case of reinstatement, the reinstated licensee shall pay all applicable costs or fines, or both, and a reinstatement fee as provided for in the board's fee schedule established pursuant to R.S. 37:1184 and 40:972.

M. Surrender of License

1. Any person or facility holding a valid CDS license which ceases to engage in activity requiring a CDS license shall surrender said license to the board upon termination of this activity.

2. Upon the surrender of said license, the person or facility shall forward all controlled substances and any unused order forms in his possession or under his control to the United State Drug Enforcement Administration as provided by federal laws and regulations.

3. In the event a person or facility surrenders his DEA Registration to the DEA, then the person or facility shall surrender his CDS license immediately to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

Subchapter C. Security Requirements

§2713. General Requirements

A. A licensee shall provide effective controls and procedures to guard against theft or diversion of controlled substances. In evaluating the overall security system of a licensee or applicant, the board may consider any of the following factors:

1. the type of activity conducted (e.g., processing of bulk chemicals, preparing dosage forms, packaging, labeling, cooperative buying, etc.);

2. the type and form of controlled substances handled (e.g., bulk liquids or dosage units, usable powders or nonusable powders);

3. the quantity of controlled substances handled;

4. the physical location of the premises;

5. the type of building construction comprising the facility and the general characteristics of the building(s);

6. the type of vault, safe, and secure enclosures or other storage system(s) used;

7. the adequacy of key control systems, combination lock control systems, or both;

8. the adequacy of electric detection and alarm systems, if any, including use of supervised transmittal lines and standby power sources;

9. the extent of unsupervised public and visitor access to the facility including maintenance personnel and non-employee service personnel;

10. the adequacy of supervision of employee access;

11. local police protection or security personnel;

12. the adequacy for monitoring the receipt, manufacture, distribution, procurement, and disposition of controlled substances; and

13. the applicability of the security requirements contained in all federal, state, and local laws and regulations governing the management of waste.

B. When physical security controls become inadequate, the physical security controls shall be expanded and extended accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2715. Physical Security Controls for Non-Practitioners, Narcotic Treatment Programs, and Compounders for Narcotic Treatment Programs

A. Storage Areas

1. Schedules I and II. Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedule I or II shall be stored in one of the following secure storage areas:

a. Where small quantities permit, a safe or steel cabinet:

i. which safe or steel cabinet shall have the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock manipulation, and 20 man-hours against radiological techniques;

ii. which safe or steel cabinet, if it weighs less than 750 pounds, is bolted or cemented to the floor or wall in such a way it cannot be readily removed; and

iii. which safe or steel cabinet, if necessary, depending upon the quantities and type of controlled substances stored, is equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the licensee, or such other protection as the board or its designee may approve;

b. a vault constructed before, or under construction on, September 1, 1971, which is of substantial construction with a steel door, combination or key lock, and an alarm system; or

c. a vault constructed after September 1, 1971:

i. the walls, floors, and ceilings of which vault are constructed of at least 8 inches of reinforced concrete or other substantial masonry, reinforced vertically and horizontally with 1/2 inch steel rods tied 6 inches on center, or the structural equivalent to such reinforced walls, floors, and ceilings;

ii,. the door and frame unit of which vault shall conform to the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against lock

manipulation, and 20 man-hours against radiological techniques;

iii. which vault, if operations require it to remain open for frequent access, is equipped with a "day-gate" which is self-closing and self-locking, or the equivalent, for use during the hours of operation in which the vault door is open;

iv. the walls or perimeter of which vault are equipped with an alarm, which upon unauthorized entry shall transmit a signal directly to a central station protection company, or a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the licensee, or such other protection as the board or its designee may approve, and, if necessary, alarm buttons at strategic points of entry to the perimeter area of the vault;

v. the door of which vault is equipped with contact switches; and

vi. which vault has one of the following: complete electrical lacing of the walls, floor and ceilings; sensitive ultrasonic equipment within the vault; a sensitive sound accumulator system; or such other device designed to detect illegal entry as may be approved by the board or its designee.

2. Schedules III, IV and V. Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in Schedules III, IV and V shall be stored in one of the following secure storage areas:

a. a safe or steel cabinet as described in this Section;

b. a vault as described in this Section equipped with an alarm system as described in this Section;

c. a building used for storage of Schedules III through V controlled substances with perimeter security which limits access during working hours and provides security after working hours and meets the following specifications:

i. has an electronic alarm system as described in this Section;

ii. is equipped with self-closing, self-locking doors constructed of substantial material commensurate with the type of building construction, provided, however, a door which is kept closed and locked at all times when not in use and when in use is kept under direct observation of a responsible employee or agent of the licensee is permitted in lieu of a self-closing, self-locking door. Doors may be sliding or hinged. Regarding hinged doors, where hinges are mounted on the outside, such hinges shall be sealed, welded or otherwise constructed to inhibit removal. Locking devices for such doors shall be either of the multiple-position combination or key lock type and:

(a). in the case of key locks, shall require key control which limits access to a limited number of employees; or

(b). in the case of combination locks, the combination shall be limited to a minimum number of employees and can be changed upon termination of employment of an employee having knowledge of the combination;

d. a cage, located within a building on the premises, meeting the following specifications:

i. having walls constructed of not less than No. 10 gauge steel fabric mounted on steel posts, which posts are:

(a). at least 1 inch in diameter;

(b). set in concrete or installed with lag bolts which are pinned or brazed; and

(c). placed no more than 10 feet apart with horizontal 1 1/2 inch reinforcements every 60 inches;

ii. having a mesh construction with openings of not more than 2 1/2 inches across the square;

iii. having a ceiling constructed of the same material, or in the alternative, a cage shall be erected which reaches and is securely attached to the structural ceiling of the building. A lighter gauge mesh may be used for the ceilings of large enclosed areas if walls are at least 14 feet in height;

iv. is equipped with a door constructed of No. 10 gauge steel fabric on a metal door frame in a metal door flange, and in all other respects conforms to all federal requirements; and

v. is equipped with an alarm system which upon unauthorized entry shall transmit a signal directly to a central station protection agency or a local or state police agency, each having a legal duty to respond, or to a 24-hour control station operated by the licensee, or to such other source of protection as the board or its designee may approve;

e. an enclosure of masonry or other material, approved in writing by the board or its designee as providing security comparable to a cage;

f. a building or enclosure within a building which has been inspected and approved by DEA or its predecessor agency, the United States Bureau of Narcotics and Dangerous Drugs, and continues to provide adequate security against the diversion of Schedule III through V controlled substances, of which fact written acknowledgment has been made by the special agent in charge of DEA for the area in which such building or enclosure is situated; or

g. such other secure storage areas as may be approved by the board after considering the factors listed in §2713 of this Chapter.

3. Mixing of Schedules

a. Schedule III through V controlled substances may be stored with Schedules I and II controlled substances under security measures provided by this Section.

b. Non-controlled drugs, substances and other materials may be stored with Schedule III through V controlled substances in any of the secure storage areas required by this Section, provided that permission for such storage of non-controlled items is obtained in advance, in writing, from the special agent in charge of DEA for the area in which such storage area is situated. Any such permission tendered shall be upon the special agent in charge's written determination that such non-segregated storage does not diminish security effectiveness for Schedules III through V controlled substances.

4. Multiple Storage Areas. Where several types or classes of controlled substances are handled separately by the licensee or applicant for different purposes (e.g., returned goods, or goods in process), the controlled substances may

be stored separately, provided each storage area complies with the requirements set forth in this Section.

5. Accessibility to Storage Areas. The controlled substances storage areas shall be accessible only to an absolute minimum number of specifically authorized employees. When it is necessary for employee maintenance personnel, non-employee maintenance personnel, business guests, or visitors to be present in or pass through controlled substances storage areas, the licensee shall provide for adequate observation of the area by an employee specifically authorized in writing.

B. Manufacturing and Compounding Areas

1. Before distributing a controlled substance to any person who the licensee does not know to be registered to possess the controlled substance, the licensee shall make a good faith inquiry, either with the DEA or the board, to determine that the recipient is registered to possess the controlled dangerous substance.

2. All manufacturing and compounding activities (including processing, packaging and labeling) involving controlled substances listed in any schedule shall be conducted in accordance with the following.

a. All in-process substances shall be returned to the controlled substances storage area at the termination of the process. If the process is not terminated at the end of a workday (except where a continuous process or other normal manufacturing operation should not be interrupted), the processing area or tanks, vessels, bins or bulk containers containing such substances shall be securely locked. If security requires an alarm, such alarm, upon unauthorized entry, shall transmit a signal directly to a central station protection company, or local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the licensee.

b. Manufacturing activities with controlled substances shall be conducted in an area of clearly defined limited access under surveillance by an employee(s) designated in writing as responsible for the area. Limited access may be provided, in the absence of physical dividers such as walls or partitions, by traffic control lines or restricted space designation. The employee designated responsible for the area may be engaged in the particular manufacturing operation being conducted, provided he is able to provide continuous surveillance of the area to ensure unauthorized individuals do not enter or leave the area without his knowledge.

c. During the production of controlled substances, the manufacturing areas shall be accessible only to those employees required for efficient operation. When employee maintenance personnel, non employee maintenance personnel, business guests, or visitors are present during production of controlled substances, the licensee shall provide for adequate observation of the area by an employee specifically authorized in writing.

C. Other Requirements/Narcotic Treatment Programs

1. Before distributing a controlled substance to any person who the licensee does not know to be registered to possess the controlled substance, the licensee shall make a good faith inquiry either with the DEA or the board to determine that the person is registered to possess the controlled substance.

2. The licensee shall design and operate a system to disclose to the licensee suspicious orders of controlled substances. The licensee shall inform the New Orleans Field Division Office of the DEA, or its successor, of suspicious orders when discovered by the licensee. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.

3.a. The licensee shall not distribute any controlled substance listed in Schedules II through V as a complimentary sample to any potential or current customer:

i. without the prior written request of the customer;

ii. to be used only for satisfying the legitimate medical needs of patients of the customer; and

iii. only in reasonable quantities.

b. Such request shall contain the name, address, and registration number of the customer and the name and quantity of the specific controlled substance desired. The request shall be preserved by the licensee with other records of distribution of controlled substances. In addition, the procurement requirements of §2743 of this Chapter shall be complied with for any distribution of a controlled substance listed in Schedule II. For purposes of this Paragraph, the term "customer" includes a person to whom a complimentary sample of a substance is given in order to encourage the prescribing or recommending of the substance by the person.

4. When shipping controlled substances, a licensee is responsible for selecting common or contract carriers which provide adequate security to guard against in-transit losses. When storing controlled substances in a public warehouse, a licensee is responsible for selecting a warehouseman which will provide adequate security to guard against storage losses; wherever possible, the licensee shall store controlled substances in a public warehouse which complies with the requirements set forth in §2715.A of this Chapter. In addition, the licensee shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled substances) to guard against storage or in-transit losses.

5. When distributing controlled substances through agents (e.g., sales representatives), a licensee is responsible for providing and requiring adequate security to guard against theft and diversion while the substances are being stored or handled.

6. Before the initial distribution of carfentanil etorphine hydrochloride and/or diprenorphine to any person, the licensee shall verify that the person is authorized to handle the substances(s) by contacting the DEA.

7. The acceptance of delivery of narcotic substances by a narcotic treatment program shall be made only by a licensed practitioner employed at the facility or other authorized individuals designated in writing. At the time of delivery, the licensed practitioner or other authorized individual designated in writing (excluding persons currently or previously dependent on narcotic drugs), shall sign for the narcotics and place his specific title (if any) on any invoice. Copies of these signed invoices shall be kept by the distributor.

8. Narcotics dispensed or administered at a narcotic treatment program will be dispensed or administered directly to the patient by either:

a. the licensed practitioner;

b. a registered nurse under the direction of the licensed practitioner;

c. a licensed practical nurse under the direction of the licensed practitioner; or

d. a pharmacist under the direction of the licensed practitioner.

9. Persons enrolled in a narcotic treatment program shall be required to wait in an area physically separated from the narcotic storage and dispensing area. This requirement will be enforced by the program physician and employees.

10. All narcotic treatment programs shall comply with standards established by the department respecting the quantities of narcotic drugs which may be provided to persons enrolled in a narcotic treatment program for unsupervised use.

11. The board may exercise discretion regarding the degree of security required in narcotic treatment programs based on such factors as the location of a program, the number of patients enrolled in a program and the number of physicians, staff members and security guards. Similarly, such factors will be taken into consideration when evaluating existing security or requiring new security at a narcotic treatment program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2717. Physical Security Controls for Practitioners and Pharmacies

A. Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet.

B. Controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies and institutional practitioners may disperse such substances throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

C. This Section shall also apply to non-practitioners authorized to conduct research or chemical analysis under another registration.

D. Carfentanil etorphine hydrochloride and diprenorphine shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

E. The licensee shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who, at any time, had an application for registration with the DEA denied, had a DEA registration revoked or has surrendered a DEA registration for cause. For purposes of this Subsection, the term "for cause" includes surrender in lieu of, or as a consequence of, any federal or state administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances.

F. The licensee shall notify the board and the Field Division Office of the DEA in his area, in writing, of the theft or significant loss of any controlled substances within one business day of discovery of such loss or theft. The licensee shall also complete, and submit to the board and the Field Division Office of the DEA in his area, DEA Form 106, or its electronic equivalent, regarding the loss or theft. When determining whether a loss is significant, a licensee should consider, among others, the following factors:

1. the actual quantity of controlled substances lost in relation to the type of business;

2. the specific controlled substances lost;

3. whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;

4. a pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses, and, if known;

5. whether the specific controlled substances are likely candidates for diversion;

6. local trends and other indicators of the diversion potential of the missing controlled substance.

G. Whenever the licensee distributes a controlled substance (without being registered as a distributor, as permitted by law) he shall comply with the requirements imposed on non-practitioners.

H. Central fill pharmacies shall comply with federal and state law when selecting private, common or contract carriers to transport filled prescriptions to a retail pharmacy for delivery to the ultimate user. When central fill pharmacies contract with private, common or contract carriers to transport filled prescriptions to a retail pharmacy, the central fill pharmacy is responsible for reporting in-transit losses upon discovery of such loss by use of a DEA Form 106 or its electronic equivalent. Retail pharmacies shall comply with federal and state law when selecting private, common or contract carriers to retrieve filled prescriptions from a central fill pharmacy. When retail pharmacies contract with private, common or contract carriers to retrieve filled prescriptions from a central fill pharmacy, the retail pharmacy is responsible for reporting in-transit losses upon discovery of such loss by use of a DEA Form 106 or its electronic equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2719. Security Controls for Freight Forwarding Facilities

A. All Schedule II-V controlled substances that will be temporarily stored at the freight forwarding facility shall be either:

1. stored in a segregated area under constant observation by designated responsible individual(s); or

2. stored in a secured area that meets the requirements of this Chapter. For purposes of this requirement, a facility that may be locked down (i.e., secured against physical entry in a manner consistent with requirements of this Part) and has a monitored alarm system or is subject to continuous monitoring by security personnel will be deemed to meet the requirements of this Chapter.

B. Access to controlled substances shall be kept to an absolute minimum number of specifically authorized individuals. Non-authorized individuals may not be present in or pass through controlled substances storage areas without adequate observation provided by an individual authorized in writing by the licensee.

C. Controlled substances being transferred through a freight forwarding facility shall be packed in sealed, unmarked shipping containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2721. Employee Screening by Non-Practitioners

A. An employer's comprehensive employee screening program shall include the following.

1. Question. Within the past five years, have you been convicted of a felony, or within the past two years, of any misdemeanor or are you presently formally charged with committing a criminal offense? (Do not include any traffic violations, juvenile offenses or military convictions, except by general court-martial.) If the answer is yes, furnish details of conviction, offense, location, date and sentence.

2. Question. In the past three years, have you ever knowingly used any narcotics, amphetamines or barbiturates, other than those prescribed to you by a physician or other authorized prescriber? If the answer is yes, furnish details.

3. Advice. An authorization, in writing, that allows inquiries to be made of courts and law enforcement agencies for possible pending charges or convictions shall be executed by a person who is allowed to work in an area where access to controlled substances clearly exists. A person shall be advised that any false information or omission of information will jeopardize his or her position with respect to employment. The application for employment should inform a person that information furnished or recovered as a result of any inquiry will not necessarily preclude employment, but will be considered as part of an overall evaluation of the person's qualifications. The maintaining of fair employment practices, the protection of the person's right of privacy, and the assurance that the results of such inquiries will be treated by the employer in confidence will be explained to the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

Subchapter D. Labeling and Packaging Requirements

§2723. Symbol Required

A. Each commercial container of a controlled substance shall have printed on the label the symbol designating the schedule in which such controlled substance is listed. Each such commercial container, if it otherwise has no label, shall bear a label complying with the requirement of this Section.

B. Each manufacturer shall print upon the labeling of each controlled substance distributed by him the symbol designating the schedule in which such controlled substance is listed.

C. The following symbols shall designate the schedule corresponding thereto.

Schedule	
Schedule I	CI or C-I
Schedule II	CII or C-II
Schedule III	CIII or C-III
Schedule IV	CIV or C-IV
Schedule V	CV or C-V

1. The word "schedule" need not be used. No distinction need be made between narcotic and non-narcotic substances.

D. The symbol is not required on a carton or wrapper in which a commercial container is held if the symbol is easily legible through such carton or wrapper.

E. The symbol is not required on a commercial container too small or otherwise unable to accommodate a label, if the symbol is printed on the box or package from which the commercial container is removed upon dispensing to an ultimate user.

F. The symbol is not required on a commercial container containing, or on the labeling of, a controlled substance being utilized in clinical research involving blind and double blind studies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2725. Location and Size of Symbol on Label and Labeling

A. The symbol shall be prominently located on the label or the labeling of the commercial container and/or the panel of the commercial container normally displayed to dispensers of any controlled substance. The symbol on labels shall be clear and large enough to afford easy identification of the schedule of the controlled substance upon inspection without removal from the dispenser's shelf. The symbol on all other labeling shall be clear and large enough to afford prompt identification of the controlled substance upon inspection of the labeling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2727. Sealing of Controlled Substances

A. On each bottle, multiple dose vial, or other commercial container of any controlled substance, there shall be securely affixed to the stopper, cap, lid, covering, or wrapper or such container a seal to disclose upon inspection any tampering or opening of the container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2729. Labeling and Packaging Requirements for Imported and Exported Controlled Substances

A. The symbol requirements of this Section apply to every commercial container containing, and to all labeling of, controlled substances imported into the jurisdiction of and/or the customs territory of Louisiana.

B. The symbol requirements of this Section do not apply to any commercial containers containing, or any labeling of, a controlled substance intended for export from Louisiana.

C. The sealing requirements of this Section apply to every bottle, multiple dose vial, or other commercial container of any controlled substance listed in schedule I or II, or any narcotic controlled substance listed in schedule III or IV, imported into, exported from, or intended for export from, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

Subchapter E. Recordkeeping Requirements

§2731. General Information

A. Persons Required to Keep Records and File Reports

1. Each licensee shall maintain the records and inventories and shall file the reports required by this Chapter, except as exempted by this Section. Any licensee who is authorized to conduct other activities without being registered to conduct those activities by federal law shall maintain the records and inventories and shall file the reports required by this Section for persons registered to conduct such activities. This latter requirement should not be construed as requiring stocks of controlled substances being used in various activities under one registration to be stored separately, nor does it require that separate records are required for each activity. Thus, when a researcher manufactures a controlled item, he shall keep a record of the quantity manufactured; when he distributes a quantity of the item, he shall use and keep invoices or order forms to document the transfer; when he imports a substance, he keeps as part of his records the documentation required of an importer; and when substances are used in chemical analysis, he need not keep a record of this because such a record would not be required of him under a registration to do chemical analysis. All of these records may be maintained in one consolidated record system. Similarly, the researcher may store all of his controlled items in one place, and every two years take inventory of all items on hand, regardless of whether the substances were manufactured by him, imported by him, or purchased domestically by him, of whether the substances will be administered to subjects, distributed to other researchers, or destroyed during chemical analysis.

2. An individual practitioner is required to keep records of controlled substances in Schedules II, III, IV, and V which are dispensed, other than by prescribing or administering in the lawful course of professional practice.

3. An individual practitioner is not required to keep records of controlled substances in Schedules II, III, IV, and V which are prescribed in the lawful course of professional practice, unless such substances are prescribed in the course of maintenance or detoxification treatment of an individual.

4. An individual practitioner is not required to keep records of controlled substances listed in Schedules II, III, IV and V which are administered in the lawful course of professional practice unless the practitioner regularly engages in the dispensing or administering of controlled substances and charges patients, either separately or together with charges for other professional services, for substances so dispensed or administered. Records are required to be kept for controlled substances administered in the course of maintenance or detoxification treatment of an individual.

5. Each registered mid-level practitioner shall maintain in a readily retrievable manner those documents required by the state in which he practices which describe the conditions and extent of his authorization to dispense or distribute controlled substances and shall make such documents available for inspection and copying by authorized agents of the board. Examples of such documentation include protocols, practice guidelines or practice agreements.

6. Licensees using any controlled substances while conducting preclinical research, in teaching at a registered establishment which maintains records with respect to such substances or conducting research in conformity with an exemption granted under Section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) or 360b(j)) at a registered establishment which maintains records in accordance with either of those sections, are not required to keep records if he notifies the DEA and the board of the name, address, and registration number of the establishment maintaining such records. This notification shall be given at the time the person applies for a CDS license or his renewal and shall be made in the form of an attachment to the application, which shall be filed with the application.

7. A distributing licensee who utilizes a freight forwarding facility shall maintain records to reflect transfer of controlled substances through the facility. These records shall contain the date, time of transfer, number of cartons, crates, drums or other packages in which commercial containers of controlled substances are shipped and authorized signatures for each transfer. A distributing licensee may, as part of the initial request to operate a freight forwarding facility, request permission to store records at a central location. Approval of the request to maintain central records would be implicit in the approval of the request to operate the facility. Otherwise, a request to maintain records at a central location shall be submitted in accordance with this Section. These records shall be maintained for a period of two years.

8. With respect to any and all records required by this Chapter which are maintained in a language other than English, the person responsible for maintaining such records shall provide a document accurately translating such records to English within 72 hours of such request by the board or an agent of the board.

B. Maintenance of Records and Inventories

1. Except as otherwise provided in this Section, every inventory and other records required to be kept under this Section shall be kept by the licensee and be available, for at least two years from the date of such inventory or records, for inspection and copying by authorized employees of the board.

a. Financial and shipping records may be kept at a central location, rather than at the registered location, if the licensee has notified the board in writing of his intention to keep central records. All notifications shall include the following:

i. the nature of the records to be kept centrally;

ii. the exact location where the records will be kept;

iii. the name, address, DEA registration number and type of DEA registration of the licensee whose records are being maintained centrally;

iv. whether central records will be maintained in a manual, or computer readable, form.

b. A pharmacy which possesses additional registrations for automated dispensing systems at long term care facilities may keep all records required by this Section for those additional registered sites at the pharmacy or other approved central location.

2. All licensees authorized to maintain a central recordkeeping system shall be subject to the following conditions.

a. The records to be maintained at the central record location shall not include executed order forms, prescriptions and/or inventories which shall be maintained at each registered location.

b. If the records are kept on microfilm, computer media or in any form requiring special equipment to render the records easily readable, the licensee shall provide access to such equipment with the records. If any code system is used (other than pricing information), a key to the code shall be provided to make the records understandable.

c. The licensee agrees to deliver all or any part of such records to the registered location within two business days upon receipt of a written request from the board for such records, and if the board chooses to do so in lieu of requiring delivery of such records to the registered location, to allow authorized employees of the board to inspect such records at the central location upon request by such employees without a warrant of any kind.

d. In the event that a licensee fails to comply with these conditions, the board may cancel such central recordkeeping authorization, and all other central recordkeeping authorizations held by the licensee without a hearing or other procedures. In the event of a cancellation of central recordkeeping authorizations under this Paragraph the licensee shall, within the time specified by the board, comply with the requirements of this Section that all records be kept at the registered location.

3. Licensees need not notify the board or obtain central recordkeeping approval in order to maintain records on an in-house computer system.

4. ARCOS participants who desire authorization to report from other than their registered locations shall obtain a separate central reporting identifier. Request for central reporting identifiers shall be submitted to:

ARCOS Unit
P.O. Box 28293
Central Station
Washington, DC 20005

5. Each manufacturer, distributor, importer, exporter, narcotic treatment program and compounder for narcotic treatment program shall maintain inventories and records of controlled substances as follows:

a. inventories and records of controlled substances listed in Schedules I and II shall be maintained separately from all of the other records of the licensee; and

b. inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the licensee or in such form that the information required is readily retrievable from the ordinary business records of the licensee.

6. Each individual practitioner required to keep records and institutional practitioner shall maintain inventories and records of controlled substances in the manner prescribed in this Section.

7. Each pharmacy shall maintain the inventories and records of controlled substances as follows:

a. inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained in a separate prescription file; and

b. inventories and records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than 1 inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances. However, if a pharmacy employs an ADP system or other electronic recordkeeping system for prescriptions which permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription with a red "C" is waived.

C. Records of Authorized Central Fill Pharmacies and Client Pharmacies

1. Every pharmacy that utilizes the services of a central fill pharmacy shall keep a record of all central fill pharmacies, including name, address and DEA number, which are authorized to fill prescriptions on its behalf. The pharmacy shall also verify the registration for each central fill pharmacy authorized to fill prescriptions on its behalf. These records shall be made available upon request for inspection by the board.

2. Every central fill pharmacy shall keep a record of all pharmacies, including name, address and DEA number, for which it is authorized to fill prescriptions. The central fill pharmacy shall also verify the registration for all pharmacies for which it is authorized to fill prescriptions. These records shall be made available upon request for inspection by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2733. Inventory Requirements

A. General Requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device shall be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the licensee, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the licensee, and substances in the possession of employees of the licensee and intended for distribution as complimentary samples. A separate inventory shall be made for each registered location and each independent activity registered, except as provided in this Section. In the event controlled substances in the possession or under the control of the licensee are stored at a location for which he is not

registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and that option shall be indicated on the inventory.

B. Initial Inventory Date. Every person required to keep records shall take an inventory of all stocks of controlled substances on hand on the date he first engages in the manufacture, distribution, or dispensing of controlled substances, in accordance with this Section as applicable. In the event a person commences business with no controlled substances on hand, he shall record this fact as the initial inventory.

C. Biennial Inventory Date. After the initial inventory is taken, the licensee shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

1. Exception

a. Pharmacies shall take a new inventory of all stocks of controlled substances on hand every year; the annual inventory may be taken on any date which is within one year of the previous annual inventory date.

b. Pharmacies shall take a new inventory on the following occasions:

i. arrival of a new pharmacist-in-charge;

ii. discovery of any substantial loss, disappearance, or theft of controlled substances;

iii. departure of a pharmacist-in-charge; and

iv. permanent closure of a pharmacy.

D. Inventories of Manufacturers, Distributors, Dispensers, Researchers, Importers, Exporters, and Chemical Analysts. Each person registered or authorized to manufacture, distribute, dispense, import, export, conduct research or chemical analysis with controlled substances and required to keep records shall include in the inventory the information listed below.

1. Inventories of Manufacturers. Each person authorized to manufacture controlled substances shall include the following information in the inventory.

a. For each controlled substance in bulk form to be used in (or capable of use in) the manufacture of the same or other controlled or non-controlled substances in finished form, the inventory shall include:

i. the name of the substance; and

ii. the total quantity of the substance to the nearest metric unit weight consistent with unit size.

b. For each controlled substance in the process of manufacture on the inventory date, the inventory shall include:

i. the name of the substance;

ii. the quantity of the substance in each batch and/or stage of manufacture, identified by the batch number or other appropriate identifying number; and

iii. the physical form which the substance is to take upon completion of the manufacturing process (e.g., granulations, tablets, capsules, or solutions), identified by the batch number or other appropriate identifying number, and if possible the finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number or volume thereof.

c. For each controlled substance in finished form the inventory shall include:

i. the name of the substance;

ii. each finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter);

iii. the number of units or volume of each finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial); and

iv. the number of commercial containers of each such finished form (e.g. four 100-tablet bottles or six 3-milliliter vials).

d. For each controlled substance not included in this Section (e.g., damaged, defective or impure substances awaiting disposal, substances held for quality control purposes, or substances maintained for extemporaneous compounding) the inventories shall include:

i. the name of the substance;

ii. the total quantity of the substance to the nearest metric unit weight or the total number of units of finished form; and

iii. the reason for the substance being maintained by the licensee and whether such substance is capable of use in the manufacture of any controlled substance in finished form.

2. Inventories of Distributors. Except for reverse distributors covered in this Section, each person authorized to distribute controlled substances shall include in the inventory the same information required of manufacturers pursuant to this Section.

3. Inventories of Dispensers, Researchers, and Reverse Distributors. Each person authorized to dispense, conduct research, or act as a reverse distributor with controlled substances shall include in the inventory the same information required of manufacturers pursuant to this Section. In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the dispenser, researcher, or reverse distributor shall do as follows:

a. if the substance is listed in Schedule I or II, make an exact count or measure of the contents, or

b. if the substance is listed in Schedule III, IV or V, make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case he shall make an exact count of the contents.

4. Inventories of Importers and Exporters. Each person authorized to import or export controlled substances shall include in the inventory the same information required of manufacturers pursuant to this Section. Each such person who is also registered as a manufacturer or as a distributor shall include in his inventory as an importer or exporter only those stocks of controlled substances that are actually separated from his stocks as a manufacturer or as a distributor (e.g., in transit or in storage for shipment).

5. Inventories of Chemical Analysts. Each person authorized to conduct chemical analysis with controlled substances shall include in his inventory the same information required of manufacturers pursuant to this Section as to substances which have been manufactured, imported, or received by such person. If less than 1 kilogram of any controlled substance (other than a hallucinogenic controlled substance listed in Schedule I), or less than

20 grams of a hallucinogenic substance listed in Schedule I (other than lysergic acid diethylamide), or less than 0.5 gram of lysergic acid diethylamide, is on hand at the time of inventory, that substance need not be included in the inventory. No inventory is required of known or suspected controlled substances received as evidentiary materials for analysis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2735. Continuing Records

A. General Requirements

1. Every licensee required to keep records pursuant to this Section shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him.

2. Separate records shall be maintained by a licensee for each registered location except as provided in §2731.B. In the event controlled substances are in the possession or under the control of a licensee at a location for which he is not registered, the substances shall be included in the records of the registered location to which they are subject to control or to which the person possessing the substance is responsible.

3. Separate records shall be maintained by a licensee for each independent activity for which he is registered, except as provided in Subsection B of this Section.

4. In recording dates of receipt, importation, distribution, exportation, or other transfers, the date on which the controlled substances are actually received, imported, distributed, exported, or otherwise transferred shall be used as the date of receipt or distribution of any documents of transfer (e.g., invoices or packing slips).

B. Records for Manufacturers, Distributors, Dispensers, Researchers, Importers, and Exporters

1. Records for Manufacturers. Each person authorized to manufacture controlled substances shall maintain records with the following information.

a. For each controlled substance in bulk form to be used in, or capable of use in, or being used in, the manufacture of the same or other controlled or non-controlled substances in finished form:

i. the name of the substance;

ii. the quantity manufactured in bulk form by the licensee, including the date, quantity and batch or other identifying number of each batch manufactured;

iii. the quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the substance was received;

iv. the quantity imported directly by the licensee (under a registration as an importer) for use in manufacture by him/her, including the date, quantity, and import permit or declaration number for each importation;

v. the quantity used to manufacture the same substance in finished form, including:

(a). the date and batch or other identifying number of each manufacture;

(b). the quantity used in the manufacture;

(c). the finished form (e.g., 10-milligram tablets or 10-milligram concentration per fluid ounce or milliliter);

(d). the number of units of finished form manufactured;

(e). the quantity used in quality control;

(f). the quantity lost during manufacturing and the causes therefore, if known;

(g). the total quantity of the substance contained in the finished form;

(h). the theoretical and actual yields; and

(i). such other information as is necessary to account for all controlled substances used in the manufacturing process;

vi. the quantity used to manufacture other controlled and non-controlled substances, including the name of each substance manufactured and the information required in Clause B.1.a.v of this Section;

vii. the quantity distributed in bulk form to other persons, including the date and quantity of each distribution and the name, address, and registration number of each person to whom a distribution was made;

viii. the quantity exported directly by the licensee (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exportation;

ix. the quantity distributed or disposed of in any other manner by the licensee (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity distributed or disposed; and

x. the originals of all written certifications of available procurement quotas submitted by other persons as required by federal law relating to each order requiring the distribution of a basic class of controlled substance listed in Schedule I or II.

b. For each controlled substance in finished form:

i. the name of the substance;

ii. each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

iii. the number of containers of each such commercial finished form manufactured from bulk form by the licensee, including the information required pursuant Clause B.1.a.v of this Section;

iv. the number of units of finished forms and/or commercial containers acquired from other persons, including the date of and number of units and/or commercial containers in each acquisition to inventory and the name, address, and registration number of the person from whom the units were acquired;

v. the number of units of finished forms and/or commercial containers imported directly by the person (under a registration or authorization to import), including the date of, the number of units and/or commercial containers in, and the import permit or declaration number for, each importation;

vi. the number of units and/or commercial containers manufactured by the licensee from units in finished form received from others or imported, including:

(a). the date and batch or other identifying number of each manufacture;

(b). the operation performed (e.g., repackaging or relabeling);

(c). the number of units of finished form used in the manufacture, the number manufactured and the number lost during manufacture, with the causes for such losses, if known; and

(d). such other information as is necessary to account for all controlled substances used in the manufacturing process;

vii. the number of commercial containers distributed to other persons, including the date of and number of containers in each reduction from inventory, and the name, address, and registration number of the person to whom the containers were distributed;

viii. the number of commercial containers exported directly by the licensee (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

ix. the number of units of finished forms and/or commercial containers distributed or disposed of in any other manner by the licensee (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity in finished form distributed or disposed.

2. Records for Distributors. Each person authorized to distribute controlled substances shall maintain records with the same information required of manufacturers pursuant to this Section.

3. Records for Dispensers and Researchers. Each person authorized to dispense or conduct research with controlled substances shall maintain records with the same information required of manufacturers pursuant to this Section. In addition, records shall be maintained of the number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser. In addition to the requirements of this paragraph, practitioners dispensing gamma-hydroxybutyric acid under a prescription shall also comply with federal law.

4. Records for Importers and Exporters. Each person authorized to import or export controlled substances shall maintain records with the same information required of manufacturers pursuant to this Section. In addition, the quantity disposed of in any other manner by the licensee (except quantities used in manufacturing by an importer under a registration as a manufacturer), which quantities are to be recorded pursuant to this Section; and the quantity (or number of units or volume in finished form) exported, including the date, quantity (or number of units or volume), and the export permit or declaration number for each exportation, but excluding all quantities (and number of units and volumes) manufactured by an exporter under a registration as a manufacturer, which quantities (and numbers of units and volumes) are to be recorded pursuant to this Section.

C. Records for Chemical Analysts

1. Each person authorized to conduct chemical analysis with controlled substances shall maintain records with the following information for each controlled substance:

a. the name of the substance;

b. the form or forms in which the substance is received, imported, or manufactured by the licensee (e.g., powder, granulation, tablet, capsule, or solution) and the concentration of the substance in such form (e.g., C.P., U.S.P., N.F., 10-milligram tablet or 10-milligram concentration per milliliter);

c. the total number of the forms received, imported or manufactured (e.g., 100 tablets, 30 1-milliliter vials, or 10 grams of powder), including the date and quantity of each receipt, importation, or manufacture and the name, address, and DEA registration number, if any, of the person from whom the substance was received;

d. the quantity distributed, exported, or destroyed in any manner by the licensee (except quantities used in chemical analysis or other laboratory work), including the date and manner of distribution, exportation, or destruction, and the name, address, and DEA registration number, if any, of each person to whom the substance was distributed or exported.

2. Records of controlled substances used in chemical analysis or other laboratory work are not required.

3. Records relating to known or suspected controlled substances received as evidentiary material for analysis are not required by this Section.

D. Records for Narcotic Treatment Programs

1. Each person authorized by federal and state law to maintain and/or detoxify controlled substance users in a narcotic treatment program shall maintain records with the following information for each narcotic controlled substance:

a. name of substance;

b. strength of substance;

c. dosage form;

d. date dispensed;

e. adequate identification of patient (consumer);

f. amount consumed;

g. amount and dosage form taken home by patient; and

h. dispenser's initials.

2. The records required by this Section will be maintained in a dispensing log at the narcotic treatment program site and will be maintained in compliance with Subsection B of this Section.

3. All sites which compound a bulk narcotic solution from bulk narcotic powder to liquid for on-site use shall keep a separate batch record of the compounding.

4. Records of identity, diagnosis, prognosis, or treatment of any patients which are maintained in connection with the performance of a narcotic treatment program shall be confidential, except that such records may be disclosed for purposes and under the circumstances authorized by law.

E. Records for Compounders for Narcotic Treatment Programs. Each person authorized to compound narcotic

drugs for off-site use in a narcotic treatment program shall maintain records which include the following information:

1. for each narcotic controlled substance in bulk form to be used in, or capable of use in, or being used in, the compounding of the same or other non-controlled substances in finished form:

a. the name of the substance;

b. the quantity compounded in bulk form by the licensee, including the date, quantity and batch or other identifying number of each batch compounded;

c. the quantity received from other persons, including the date and quantity of each receipt and the name, address and registration number of the other person from whom the substance was received;

d. the quantity imported directly by the licensee (under a registration as an importer) for use in compounding by him, including the date, quantity and import permit or declaration number of each importation;

e. the quantity used to compound the same substance in finished form, including:

i. the date and batch or other identifying number of each compounding;

ii. the quantity used in the compound;

iii. the finished form (e.g., 10-milligram tablets or 10-milligram concentration per fluid ounce or milliliter);

iv. the number of units of finished form compounded;

v. the quantity used in quality control;

vi. the quantity lost during compounding and the causes therefore, if known;

vii. the total quantity of the substance contained in the finished form;

viii. the theoretical and actual yields; and

ix. such other information as is necessary to account for all controlled substances used in the compounding process;

f. the quantity used to manufacture other controlled and non-controlled substances; including the name of each substance manufactured and the information required in Clause B.1.a.v of this Section;

g. the quantity distributed in bulk form to other programs, including the date and quantity of each distribution and the name, address and registration number of each program to whom a distribution was made;

h. the quantity exported directly by the licensee (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exploration; and

i. the quantity disposed of by destruction, including the reason, date and manner of destruction;

2. tor each narcotic controlled substance in finished form:

a. the name of the substance;

b. each finished form (e.g., 10-milligram tablet or 10 milligram concentration per fluid ounce or milliliter) and the number of units or volume or finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

c. the number of containers of each such commercial finished form compounded from bulk form by the licensee, including the information required pursuant to Clause B.1.a.v of this Section;

d. the number of units of finished forms and/or commercial containers received from other persons, including the date of and number of units and/or commercial containers in each receipt and the name, address and registration number of the person from whom the units were received;

e. the number of units of finished forms and/or commercial containers imported directly by the person (under a registration or authorization to import), including the date of, the number of units and/or commercial containers in, and the import permit or declaration number for, each importation;

f. the number of units and/or commercial containers compounded by the licensee from units in finished form received from others or imported, including:

i. the date and batch or other identifying number of each compounding;

ii. the operation performed (e.g., repackaging or relabeling);

iii. the number of units of finished form used in the compound, the number compounded and the number lost during compounding, with the causes for such losses, if known; and

iv. such other information as is necessary to account for all controlled substances used in the compounding process;

g. the number of containers distributed to other programs, including the date, the number of containers in each distribution, and the name, address and registration number of the program to which the containers were distributed;

h. the number of commercial containers exported directly by the licensee (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

i. the number of units of finished forms and/or commercial containers destroyed in any manner by the licensee, including the reason, the date and manner of destruction.

F. Additional Recordkeeping Requirements Applicable to Drug Products Containing Gamma-Hydroxybutyric Acid. In addition to the recordkeeping requirements for dispensers and researchers provided in this Chapter, practitioners dispensing gamma-hydroxybutyric acid manufactured or distributed in accordance with federal law shall maintain and make available for inspection and copying by the board, all of the following information for each prescription:

1. name of the prescribing practitioner;

2. prescribing practitioner's federal and state registration numbers, with the expiration dates of these registrations;

3. verification that the prescribing practitioner possesses the appropriate registration to prescribe this controlled substance;

4. patient's name and address;

5. patient's insurance provider, if available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2737. Reports

A. Reports from Manufacturers Importing Narcotic Raw Material

1. Every manufacturer which imports or manufactures from narcotic raw material (opium, poppy straw, and concentrate of poppy straw) shall submit information which accounts for the importation and for all manufacturing operations performed between importation and the production in bulk or finished marketable products, standardized in accordance with the U.S. Pharmacopeia, National Formulary or other recognized medical standards. Reports shall be signed by the authorized official and submitted in compliance with 21 CFR §1304.31or its successor.

2. The following information shall be submitted for each type of narcotic raw material (quantities are expressed as grams of anhydrous morphine alkaloid):

a. beginning inventory;
b. gains on reweighing;
c. imports;
d. other receipts;
e. quantity put into process;
f. losses on reweighing;
g. other dispositions; and
h. ending inventory.

3. The following information shall be submitted for each narcotic raw material derivative including morphine, codeine, thebaine, oxycodone, hydrocodone, medicinal opium, manufacturing opium, crude alkaloids and other derivatives (quantities are expressed as grams of anhydrous base or anhydrous morphine alkaloid for manufacturing opium and medicinal opium):

a. beginning inventory;
b. gains on reweighing;
c. quantity extracted from narcotic raw material;
d. quantity produced/manufactured/synthesized;
e. quantity sold;
f. quantity returned to conversion processes for reworking;
g. quantity used for conversion;
h. quantity placed in process;
i. other dispositions;
j. losses on reweighing; and
k. ending inventory.

4. The following information shall be submitted for importation of each narcotic raw material:

a. import permit number;
b. date shipment arrived at the united states port of entry;
c. actual quantity shipped;
d. assay (percent) of morphine, codeine and thebaine; and
e. quantity shipped, expressed as anhydrous morphine alkaloid.

5. Upon importation of crude opium, samples will be selected and assays made by the importing manufacturer in the manner and according to the method specified in the U.S. Pharmacopoeia. Where final assay data is not determined at the time of rendering report, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

6. Where factory procedure is such that partial withdrawals of opium are made from individual containers, there shall be attached to each container a stock record card on which shall be kept a complete record of all withdrawals therefrom.

7. All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the manufacture of a specified end-product, it shall no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

B. Reports from Manufacturers Importing Coca Leaves

1. Every manufacturer importing or manufacturing from raw coca leaves shall submit information accounting for the importation and for all manufacturing operations performed between the importation and the manufacture of bulk or finished products standardized in accordance with U.S. Pharmacopoeia, National Formulary, or other recognized standards. The reports shall be submitted in compliance with 21 CFR §1304.32.

2. The following information shall be submitted for raw coca leaf, ecgonine, ecgonine for conversion or further manufacture, benzoylecgonine, manufacturing coca extracts (list for tinctures and extracts; and others separately), other crude alkaloids and other derivatives (quantities should be reported as grams of actual quantity involved and the cocaine alkaloid content or equivalency):

a. beginning inventory;
b. imports;
c. gains on reweighing;
d. quantity purchased;
e. quantity produced;
f. other receipts;
g. quantity returned to processes for reworking;
h. material used in purification for sale;
i. material used for manufacture or production;
j. losses on reweighing;
k. material used for conversion;
l. other dispositions; and
m. ending inventory.

3. The following information shall be submitted for importation of coca leaves:

a. import permit number;
b. date the shipment arrived at the United States port of entry;
c. actual quantity shipped;
d. assay (percent) of cocaine alkaloid; and
e. total cocaine alkaloid content.

4. Upon importation of coca leaves, samples will be selected and assays made by the importing manufacturer in accordance with recognized chemical procedures. These assays shall form the basis of accounting for such coca leaves, which shall be accounted for in terms of their cocaine alkaloid content or equivalency or their total anhydrous coca alkaloid content. Where final assay data is not determined at the time of submission, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

5. Where factory procedure is such that partial withdrawals of medicinal coca leaves are made from individual containers, there shall be attached to the container

a stock record card on which shall be kept a complete record of withdrawals therefrom.

6. All in-process inventories should be expressed in terms of end-products and not precursors. Once precursor material has been changed or placed into process for the manufacture of a specified end-product, it shall no longer be accounted for as precursor stocks available for conversion or use, but rather as end-product in-process inventories.

C. Reports to ARCOS

1. Reports generally. All reports required by this Subsection shall be filed with the ARCOS Unit, PO 28293, Central Station, Washington, DC 20005 on DEA Form 333, or on media which contains the data required by DEA Form 333 and which is acceptable to the ARCOS Unit. A copy of the report shall be filed with the board.

2. Frequency of Reports. Acquisition/Distribution transaction reports shall be filed every quarter not later than the fifteenth day of the month succeeding the quarter for which it is submitted; except that a licensee may be given permission to file more frequently (but not more frequently than monthly), depending on the number of transactions being reported each time by that licensee. Inventories shall provide data on the stocks of each reported controlled substance on hand as of the close of business on December 31 of each year, indicating whether the substance is in storage or in process of manufacturing. These reports shall be filed not later than January 15 of the following year. Manufacturing transaction reports shall be filed annually for each calendar year not later than January 15 of the following year, except that a licensee may be given permission to file more frequently (but not more frequently than quarterly).

3. Persons Reporting. For controlled substances in Schedules I, II or narcotic controlled substances in Schedule III and gamma- hydroxybutyric acid drug product controlled substances in Schedule III, each person who is registered to manufacture in bulk or dosage form, or to package, repackage, label or relabel, and each person who is registered to distribute shall report acquisition/distribution transactions. In addition to reporting acquisition/distribution transactions, each person who is registered to manufacture controlled substances in bulk or dosage form shall report manufacturing transactions on controlled substances in Schedules I and II, each narcotic controlled substance listed in Schedules III, IV, and V, and on each psychotropic controlled substance listed in Schedules III and IV as identified in Paragraph 4 of this Subsection.

4. Substances Covered

a. Manufacturing and acquisition/distribution transaction reports shall include data on each controlled substance listed in Schedules I and II and on each narcotic controlled substance listed in Schedule III (but not on any material, compound, mixture or preparation containing a quantity of a substance having a stimulant effect on the central nervous system, which material, compound, mixture or preparation is listed in Schedule III or on any narcotic controlled substance listed in Schedule V), and on gamma-hydroxybutyric acid drug products listed in Schedule III. Additionally, reports on manufacturing transactions shall include the following psychotropic controlled substances listed in Schedules III and IV.

i. Schedule III:

(a). benzphetamine;

(b). cyclobarbital;

(c). methyprylon; and

(d). phendimetrazine.

ii. Schedule IV:

(a). barbital;

(b). diethylpropion (amfepramone);

(c). ethchlorvynol;

(d). ethinamate;

(e). lefetamine (spa);

(f). mazindol;

(g). meprobamate;

(h). methylphenobarbital;

(i). phenobarbital;

(j). phentermine; and

(k). pipradrol.

b. Data shall be presented in such a manner as to identify the particular form, strength, and trade name, if any, of the product containing the controlled substance for which the report is being made. For this purpose, persons filing reports shall utilize the National Drug Code Number assigned to the product under the National Drug Code System of the Food and Drug Administration.

5. Transactions Reported. Acquisition/distribution transaction reports shall provide data on each acquisition to inventory (identifying whether it is, e.g., by purchase or transfer, return from a customer, or supply by the federal government) and each reduction from inventory (identifying whether it is, e.g., by sale or transfer, theft, destruction or seizure by government agencies). Manufacturing reports shall provide data on material manufactured, manufacture from other material, use in manufacturing other material and use in producing dosage forms.

6. Exceptions. A registered institutional practitioner who repackages or relabels exclusively for distribution or who distributes exclusively to (for dispensing by) agents, employees, or affiliated institutional practitioners of the licensee may be exempted from filing reports under this section by applying to the ARCOS Unit of the DEA.

D. Reports of Theft or Loss. The licensee shall notify the New Orleans Field Division Office of the DEA, or its successor, and the board, in writing, of any theft or significant loss of any controlled substances within one business day of discovery of such theft or loss. The supplier is responsible for reporting in-transit losses of controlled substances by the common or contract carrier selected pursuant to Subsection E of this Section, within one business day of discovery of such theft or loss. The licensee shall also complete, and submit to the New Orleans Field Division Office of the DEA, or its successor, and the board, DEA Form 106, or its electronic equivalent, regarding the theft or loss. Thefts and significant losses shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them. When determining whether a loss is significant, a licensee should consider, among others, the following factors:

1. the actual quantity of controlled substances lost in relation to the type of business;

2. the specific controlled substances lost;

3. whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to

unique activities that may take place involving the controlled substances;

4. a pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses, and, if known;

5. whether the specific controlled substances are likely candidates for diversion; and

6. local trends and other indicators of the diversion potential of the missing controlled substance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

Subchapter F. Production, Distribution, and Utilization

§2739. Manufacture

A. A licensee located in Louisiana engaged in the manufacture of controlled dangerous substances within Schedules I, II, III, IV, or V shall prepare a complete and accurate record of the date of manufacture, the theoretical and actual yields, the quantity used for quality control, the identity of batch numbers or other appropriate identification, and the quantity of any product reworked for any reason for each manufactured batch of controlled dangerous substances or each manufactured batch of drugs in which a controlled dangerous substance was used as a raw material.

B. The licensee shall maintain manufacturing records in such a manner that the identity of a batch of controlled dangerous substances finished product can be matched to the identity of the controlled dangerous substance raw material used to make that product.

C. The licensee shall maintain any other such records as are necessary to account for all controlled dangerous substances used in the manufacturing process.

D. A building where manufacturing takes place shall be maintained in a clean and orderly manner and shall be of a suitable size, construction, and location to facilitate cleaning, maintenance, processing, and packing, labeling, or storing of legend drugs pursuant to federal and state requirements.

E. All manufacturers shall employ security precautions by ensuring controlled access to premises to avoid drug diversion, including adequate legend drug storage, alarm system security, and adequate lighting and protection of the premises.

F. Finished products, warehouse control, and distribution procedures shall include a system by which the distribution of each lot of drug can be readily determined to facilitate its recall if necessary. Records within the system shall contain the name and address of the consignee, date and quantity shipped, and the lot or control number of the drug. Records shall be retained a minimum of two years after the distribution of the drug has been completed, or for one year after the expiration date of the drug, whichever is longer.

G. To assure the quality of the finished product, warehouse control shall include a system whereby the oldest approved stock is distributed first.

AUTHORITY NOTE: Promulgated in accordance with R.S.40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2741. Distribution

A. A distributor licensee handling controlled substances in Schedules I or II shall maintain complete and accurate records of the original copies of all order forms received and filled for orders of controlled substances within these schedules. This file shall be kept separate from the licensee's other business and professional records and shall be kept in this file a minimum of two years from the date the order was filled.

B. A distributor licensee handling controlled substances in Schedules III, IV, and V shall maintain complete and accurate records of all distributions for a minimum of two years from the date of each distribution. These records shall contain the full name, address, and registration number, if any, of the recipient, the common or established name of the controlled substance, its dosage, form, and strength, amount, and date of distribution.

C. A distributor is prohibited from selling or distributing drugs or drug devices except to a person or facility authorized by law or regulation to procure or possess drugs or drug devices.

D. A distributor shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods.

E. A distributor shall maintain a written policy for handling recalls and withdrawals of products due to:

1. any voluntary action on the part of the manufacturer;

2. the direction of the Food and Drug Administration, or any other federal, state, or local government agency; or

3. replacement of existing merchandise with an approved product with a new package design.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2743. Procurement Requirements

A. Orders for Schedule I and II Controlled Substances

1. General Requirements. A licensee acquiring controlled substances in Schedules I and II shall maintain a file of the duplicate copies of all order forms used to obtain controlled substances within these schedules. Each duplicate copy of any order form used to order controlled substances shall be kept in this file a minimum of two years from the date the order form was completed. This file shall be kept separate from the licensee's other business or professional records. These records shall contain the full name, address and license number of the supplier, the common or established name of the controlled substance, its dosage form and strength, the amount, and the date of receipt.

2. DEA Form 222. Either a DEA Form 222 or its electronic equivalent is required for each distribution of a Schedule I or II controlled substance except for the following:

a. distributions to persons exempted from registration by federal or state law;

b. exports from the United States that conform to federal requirements;

c. deliveries to a registered analytical laboratory or its agent approved by DEA;

d. delivery from a central fill pharmacy to a retail pharmacy.

3. Electronic Orders

a. Electronic orders for Schedule I or II controlled substances shall comply with the federal requirements set forth in 21 CFR §1305.21 and §1311 or their successors.

i. To be valid, the purchaser shall sign an electronic order for a Schedule I or II controlled substance with a digital signature issued to the purchaser, or the purchaser's agent, by DEA as provided by federal law.

ii. The following data fields shall be included on an electronic order for Schedule I and II controlled substances:

(a). a unique number the purchaser assigns to track the order. The number shall be in the following 9-character format: the last two digits of the year, X, and six characters as selected by the purchaser;

(b). the purchaser's DEA registration number;

(c). the name of the supplier;

(d) the complete address of the supplier (may be completed by either the purchaser or the supplier);

(e). the supplier's DEA registration number (may be completed by either the purchaser or the supplier);

(f). the date the order is signed;

(g). the name (including strength where appropriate) of the controlled substance product or the National Drug Code (NDC) number (the NDC number may be completed by either the purchaser or the supplier);

(h). the quantity in a single package or container;

(i). the number of packages or containers of each item ordered.

iii. An electronic order may include controlled substances that are not in schedules I and II and non-controlled substances.

b. Procedure for Filling Electronic Orders

i. A purchaser shall submit the order to a specific supplier. The supplier may initially process the order (e.g., entry of the order into the computer system, billing functions, inventory identification, etc.) centrally at any location, regardless of the location's registration with DEA. Following centralized processing, the supplier may distribute the order to one or more registered locations maintained by the supplier for filling. The licensee shall maintain control of the processing of the order at all times.

ii. A supplier may fill the order for a Schedule I or II controlled substance, if possible and if the supplier desires to do so and is authorized to do so under federal law.

iii. A supplier shall do the following before filling the order.

(a). Verify the integrity of the signature and the order by using software that complies with federal law to validate the order.

(b). Verify that the digital certificate has not expired.

(c). Check the validity of the certificate holder's certificate by checking the DEA's Certificate Revocation List.

(d). Verify the licensee's eligibility to order the controlled substances by checking the certificate extension data.

iv. The supplier shall retain an electronic record of every order, and, linked to each order, a record of the number of commercial or bulk containers furnished on each item and the date on which the supplier shipped the containers to the purchaser. The linked record shall also include any data on the original order that the supplier completes. Software used to handle digitally signed orders shall comply with DEA's requirements digital certificates for electronic orders.

v. If an order cannot be filled in its entirety, a supplier may fill it in part and supply the balance by additional shipments within 60 days following the date of the order. No order is valid more than 60 days after its execution by the purchaser.

vi. A supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

vii. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and archived.

B. Orders for Schedule III, IV, and V Controlled Substances. All licensees acquiring controlled substances in Schedules III, IV, or V shall maintain complete and accurate records of all order forms a minimum of two years from the date of each such receipt. These records shall contain the full name, address, and license number of the supplier, the common or established name of the controlled substance, its dosage form and strength, the amount and the date of receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2745. Prescriptions

A. Practitioners Authorized to Issue Prescriptions. A prescription for a controlled substance may be issued only by an individual practitioner who is:

1. authorized by law to prescribe controlled substances, and includes the following:

a. a physician;

b. a dentist;

c. a veterinarian;

d. a physician assistant (but no substances listed in Schedule II, and only as permitted by supervising physician);

e. an advanced practice registered nurse (but only as permitted by collaborating physician);

f. an optometrist (but no substances listed in Schedule II); or

g. a medical psychologist (but no narcotics);

2. in possession of a valid license from the appropriate state professional licensing agency, and is not restricted by that agency from prescribing controlled substances; and

3. in possession of a valid registration from the U.S. Drug Enforcement Administration (DEA), unless otherwise exempted from that registration requirement.

B. Purpose of Issue

1. A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing of controlled substances rests upon the prescribing practitioner; however, a corresponding responsibility rests with the pharmacist who dispenses the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent

of the Controlled Substances Act (21 USC 829), and the person knowingly dispensing such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

2. A prescription shall not be issued or dispensed in order for an individual practitioner to obtain controlled substances for supplying the individual for the purpose of general dispensing or administration to patients.

3. A prescription may not be issued for "detoxification treatment" or "maintenance treatment," unless the prescription is for a Schedule III, IV, or V narcotic drug approved by the federal Food and Drug Administration (FDA) specifically for use in maintenance or detoxification treatment and the prescribing practitioner is in compliance with the federal rules governing such activities.

C. Manner of Issuance

1. All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued.

2. All prescriptions for controlled substances shall contain the following information:

a. full name and address of the patient;

b. drug name, strength and dosage form;

c. quantity of drug prescribed;

d. directions for use; and

e. name, address, telephone number and DEA registration number of the prescriber.

3. A prescription issued for a Schedule III, IV, or V narcotic drug approved by FDA specifically for "detoxification treatment" or "maintenance treatment" must include the identification number issued by the DEA or a written notice stating that the practitioner is acting under the good faith exception of 21 CFR §1301.28(d).

4. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter, and they shall be manually signed by the prescriber.

a. The prescriptions may be prepared by the secretary or agent for the signature of the prescriber, but the prescriber is responsible in case the prescription does not conform in all essential respects to the law and regulations.

b. A corresponding liability rests upon the pharmacist who dispenses a prescription not prepared in the form prescribed by DEA regulations or these rules.

5. A prescriber exempted from registration under 21 CFR §1301.22(c) shall include on all such prescriptions issued by him the registration number of the hospital or other institution and the special internal code number assigned to him by the hospital or other institution, in lieu of the registration number of the practitioner required by this Section. Each such written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician.

6. An official exempted from registration under 21 CFR §1301.22(c) shall include on all prescriptions issued by him his branch of service or agency and his service identification number, in lieu of the registration number of the practitioner required by this Section. Each such prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer.

7. Format Requirements. With the exception of medical orders written for patients in facilities licensed by the department, prescription forms shall adhere to the following requirements.

a. Written Prescriptions

i. The prescription form shall not be smaller than 4 inches by 5 inches, provided however, that forms used by pharmacists to record telephoned or transferred prescriptions shall be exempt from this requirement.

ii. The prescription form shall clearly indicate the authorized prescriber's name, licensure designation, address, telephone number, and DEA Registration Number. In the event multiple prescribers are identified on the prescription form, the prescriber's specific identity shall be clear and unambiguous. This identification may be indicated by any means, including but not limited to, a marked check box next to, or circling, the prescriber's printed name.

iii. In the event the authorized prescriber is an advanced practice registered nurse or a physician's assistant, the prescription form shall clearly indicate the prescriber's practice affiliation. The affiliated physician's name, address, and telephone number shall appear on the prescription form.

iv. The prescription form shall contain no more than four prescription drug or device orders. While nothing in these rules shall prohibit the pre-printing of any number of prescription drugs or devices on the prescription form, no prescription form issued by a prescriber shall identify more than four prescription drugs or devices to be dispensed.

v. For each prescription drug or device ordered on a prescription form, there shall be a pre-printed check box labeled "Dispense as Written", or "DAW", or both.

vi. For each prescription drug or device ordered on a prescription form, there shall be a refill instruction, if any.

vii. The prescription form shall bear a single printed signature line, and the prescriber shall manually sign the prescription.

b. Oral Prescriptions

i. With the exception of prescriptions for controlled substances listed in Schedule II, a prescription issued by a prescriber may be communicated to a pharmacist by an employee or agent of the prescriber.

ii. Upon the receipt of an oral prescription from a prescriber or his agent, the pharmacist shall reduce the order to a written form prior to dispensing the controlled substance.

iii. The pharmacist shall record all of the information identified in this Subsection on the prescription form.

D. Practitioners Authorized to Dispense Prescriptions

1. A prescription for a controlled substance shall only be dispensed by a pharmacist, acting in the usual course of his professional practice, and either registered individually or employed in a registered pharmacy; however, nothing in this Section shall prohibit a physician, dentist, or veterinarian from personally dispensing such prescriptions to his own patients, in conformance with the laws and rules promulgated by the DEA and his own professional licensing agency.

2. Practitioners dispensing controlled substances shall procure and store those controlled substances in conformance with the requirements specified in this Chapter.

3. Practitioners dispensing controlled substances shall dispense only those controlled substances which they have acquired through the procurement and distribution

procedures described in this Chapter; a practitioner shall not dispense any controlled substances possessed by another practitioner.

E. Administering Narcotic Drugs

1. A practitioner may administer or provide directly, but not prescribe, a narcotic drug listed in any schedule to a narcotic dependent person for the purpose of maintenance or detoxification treatment if the practitioner meets both of the following conditions:

a. the practitioner is separately registered with the DEA as a narcotic treatment program; and

b. the practitioner is in compliance with DEA regulations regarding treatment qualifications, security, records, and unsupervised use of the drugs pursuant to federal law.

2. Nothing in this Subsection shall prohibit a physician who is not specifically registered to conduct a narcotic treatment program from administering (but not prescribing) narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment. Not more than one day's medication may be administered to the person or for the person's use at one time. Such emergency treatment may be carried out for not more than three days and may not be renewed or extended.

3. This Subsection is not intended to impose any limitations on a physician or authorized hospital staff to administer or provide narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or to administer or provide directly narcotic drugs to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

4. A practitioner may prescribe, administer or provide directly any narcotic drug listed in Schedule III, IV, or V approved by the FDA specifically for use in maintenance or detoxification treatment to a narcotic dependent person if the practitioner complies with the requirements of 21 CFR §1301.28.

F. Controlled Substances Listed in Schedule II

1. Requirements of Prescription

a. A pharmacist may dispense a controlled substance listed in Schedule II only pursuant to a written prescription, except as provided in Subparagraph F.1.f of this Section.

b. A prescription for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except for the following three circumstances:

i. a prescription prepared in conformance with Subsection C of this Section written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by the practitioner or the practitioner’s agent to the dispensing pharmacy by facsimile. The facsimile may serve as the original written prescription for purposes of this Subsection and it shall be maintained in accordance with §2731.B.7 of this Chapter;

ii. a prescription prepared in conformance with Subsection C of this Section written for a Schedule II substance for a resident of a long term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile may serve as the original written prescription for purposes of this Subsection and it shall be maintained in accordance with §2731.B.7 of this Chapter;

iii. a prescription prepared in conformance with Subsection C of this Section written for a Schedule II narcotic substance for a patient enrolled in a hospice care program certified and/or paid for by Medicare under Title XVIII or a hospice program which is licensed by the state may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile, provided that the practitioner or practitioner's agent has noted on the prescription that the patient is a hospice patient. The facsimile may serve as the original written prescription for purposes of this Subsection and it shall be maintained in accordance with §2731.B.7 of this Chapter.

c. The original prescription shall be maintained in accordance with §2731.B.7 of this Chapter.

d. An individual practitioner may administer or provide directly a controlled substance listed in Schedule II in the course of his professional practice without a prescription, subject to the provisions of Subsection E of this Section.

e. An institutional practitioner may administer or provide directly (but not prescribe) a controlled substance listed in Schedule II only pursuant to a written prescription signed by the prescribing individual practitioner or to an order for medication made by an individual practitioner which is provided for immediate administration to the ultimate user.

f. Authorization for Emergency Dispensing. An emergency situation exists when administration of the drug is necessary for immediate treatment, an appropriate alternate treatment is not available, and the prescribing practitioner cannot reasonably provide a written prescription. In the case of an emergency situation, a pharmacist may dispense a controlled substance listed in Schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that:

i. the quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescriber);

ii. the prescription shall be immediately reduced to written form by the pharmacist and shall contain all information described in Paragraph C.2 of this Section, except for the signature of the prescriber;

iii. if the prescriber is not known to the pharmacist, he shall make a reasonable effort to determine that the oral authorization came from a registered prescriber, which may include a callback to the prescriber using his telephone number as listed in the telephone directory or other good faith efforts to insure his identity; and

iv. within seven days after authorizing an emergency oral prescription, the prescriber shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to

conforming to the requirements of Subsection C of this Section, the prescription shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it shall be postmarked within the seven-day period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to written form. The pharmacist shall notify the nearest office of the DEA if the prescriber fails to deliver a written prescription to him within the required time; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescriber.

g. Central fill pharmacies shall not be authorized under this paragraph to prepare prescriptions for a controlled substance listed in Schedule II upon receiving an oral authorization from a pharmacist or an individual practitioner.

h. Notwithstanding the requirements of this Subsection, a prescription for a controlled substance listed in Schedule II may be generated, signed, transmitted or received in electronic form, but not until permitted by the DEA, and then only in conformance with the rules established for such procedures.

2. Expiration Date of Prescriptions. A prescription for a controlled substance listed in Schedule II shall expire six months after the date of issue. No pharmacist shall dispense any controlled substance pursuant to an expired prescription.

3. Refilling of Prescriptions; Issuance of Multiple Prescriptions

a. The refilling of a prescription for a controlled substance listed in Schedule II is prohibited.

b. An individual practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a controlled substance listed in Schedule II, provided the following conditions are met:

i. each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice;

ii. the individual practitioner provides written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be dispensed immediately) indicating the earliest date on which a pharmacist may dispense each prescription;

iii. the individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

iv. the individual practitioner complies fully with all other applicable requirements under federal law and these rules.

G. Controlled Substances Listed in Schedules III, IV, and V

1. Requirements of Prescription

a. A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V which is a prescription drug only pursuant to either a written prescription signed by a practitioner or a facsimile of a written, signed prescription transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy, or in the alternative, to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist containing all the information required in Subsection C of this Section, except for the signature of the prescriber.

b. An individual practitioner may administer or provide directly a controlled substance listed in Schedule III, IV, or V without a prescription, in the course of his professional practice, subject to the provisions of Subsection E of this Section.

c. An institutional practitioner may administer or provide directly (but not prescribe) a controlled substance listed in Schedule III, IV, or V only pursuant to a written prescription signed by an individual practitioner, or pursuant to a facsimile of a written prescription or order for medication transmitted by the practitioner or the practitioner's agent to the institutional pharmacist, or pursuant to an oral prescription made by an individual practitioner and promptly reduced to written form by the pharmacist (containing all information required in Subsection C of this Section except for the signature of the prescriber), or pursuant to an order for medication made by an individual practitioner which dispensed for immediate administration to the ultimate user in conformance with the requirements of Subsection E of this Section.

d. A prescription issued by a prescriber may be communicated to a pharmacist by an employee or agent of the prescriber.

e. Notwithstanding the requirements of this Subsection, a prescription for a controlled substance listed in Schedule III, IV, or V may be generated, signed, transmitted or received in electronic form, but not until permitted by the DEA, and then only in conformance with the rules established for such procedures.

2. Expiration Date of Prescriptions A prescription for a controlled substance listed in Schedule III, IV, or V shall expire six months after the date of issue, or following the acquisition of the number of refills authorized by the prescriber on the original prescription, whichever shall first occur. No pharmacist shall dispense any controlled substance pursuant to an expired prescription.

3. Refilling of Prescriptions. The prescriber may authorize the refilling of a prescription for a controlled substance listed in Schedule III, IV, or V by including specific refill instructions on the prescription prior to its issuance. The maximum number of refills the prescriber may authorize is five. In the absence of a specific refill instruction on the original prescription from the prescriber, the prescription shall not be refilled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2747. Dispensing Requirements

A. Location of Dispensing Activities. A pharmacist may dispense a prescription for a controlled substance pursuant to a valid prescription or order while in the usual course of his professional practice, but only within a prescription department in a pharmacy licensed by the board. A valid prescription or order is a prescription or order issued for a legitimate medical purpose by a practitioner authorized by law while acting in the usual course of his professional practice.

B. Prescriptions for Controlled Substances Listed in Schedule II

1. Oral Prescriptions. A pharmacist may accept and dispense an oral prescription from a prescribing practitioner, but only under the conditions described in, and in conformance with the requirements of, §2745.F.1.f of this Chapter.

2. Prescriptions Received by Facsimile Equipment

a. The facsimile equipment designated for the receipt of prescriptions shall be located within a prescription department in a pharmacy. The paper or other media used in the facsimile equipment designated for the receipt of prescriptions shall be non-fading and technically capable of providing a legible prescription.

b. A pharmacist shall not dispense a prescription based solely on a copy of the prescription received by facsimile, except under the circumstances described in §2745.F.1.b.i, ii or iii.

c. In the event the facsimile transmission does not clearly identify the prescriber's office or other authorized location as the point of origin of the transmission, the pharmacist shall verify the authenticity of the prescription prior to dispensing the controlled substance.

3. Expiration Date. A pharmacist shall not dispense a prescription for a controlled substance listed in Schedule II more than six months after the date of issue of the prescription.

4. Completion of Prescription Form. In the event a pharmacist receives a prescription for a controlled substance listed in Schedule II lacking certain required information, the pharmacist may consult with the prescriber (but not the prescriber's agent) to clarify the prescriber's intent. Following a consultation with the prescriber and the appropriate documentation thereof on the prescription form:

a. A pharmacist may record changes to the following data elements on the prescription form:

i. patient's address;

ii. drug strength;

iii. quantity prescribed; or

iv. directions for use.

b. A pharmacist may add the following data elements on the prescription form:

i. patient's address;

ii. drug dosage form; or

iii. prescriber's DEA registration number; however,

c. a pharmacist shall never make changes to or add the following data elements on the prescription form:

i. patient's name;

ii. date of issue;

iii. drug name (except for generic interchange as permitted by law); or

iv. prescriber signature.

5. Partial Filling of Prescription

a. The partial filling of a prescription for a controlled substance listed in Schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written (or emergency oral) prescription and he makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion of the prescription may be dispensed within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall notify the prescriber. No further quantity shall be dispensed beyond 72 hours without a new prescription.

b. A prescription for a controlled substance listed in Schedule II written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescriber prior to partially filling the prescription. Both the pharmacist and the prescriber have a responsibility to assure that the controlled substance is for a terminally ill patient.

i. The pharmacist shall record on the prescription form whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of these controlled substance rules.

ii. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

iii. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed.

iv. Notwithstanding the requirements of §2745.F.2, prescriptions for patients with a medical diagnosis documenting a terminal illness or for patients in a LTCF shall be valid for a period of time not to exceed 60 days from the date of issue unless terminated sooner by the discontinuance of the medication.

c. Information pertaining to current prescriptions for controlled substances listed in Schedule II for patients in a LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if this system has the capability to permit:

i. output (display or printout) of the original prescription number, date of issue, identification of prescribing practitioner, identification of patient, address of the LTCF or address of the hospital or residence of the patient, identification of the medication authorized (to include dosage, form, strength and quantity), listing of the partial fillings that have been dispensed under each prescription, and the information required in §2747.A.5.b;

ii. immediate (real time) updating of the prescription record each time a partial filling of the prescription is conducted;

iii. retrieval of partially filled prescription information.

6. Refills. A pharmacist shall not refill a prescription for a controlled substance listed in Schedule II.

7. Labeling of Dispensed Medication and Filing of Prescription

a. The pharmacist dispensing a written or emergency oral prescription for a controlled substance listed in Schedule II shall affix to the package a dispensing label containing the following data elements:

i. name, address and telephone number of the pharmacy;

ii. prescription number;

iii. date of dispensing;
iv. prescribing practitioner's name;
v. patient's name;
vi. drug name and strength;
vii. directions for use;
viii. pharmacist's name or initials;
ix. the following warning statement:

"Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed", provided however, that this statement shall not be required to appear on the label of a controlled substance dispensed for use in clinical investigations which are "blind;"

x. other cautionary or auxiliary labels as applicable.

b. If the prescription is dispensed at a central fill pharmacy, the pharmacist at the central fill pharmacy shall affix to the package a label showing the name and address of the retail pharmacy and a unique identifier (i.e., the central fill pharmacy's DEA registration number) indicating the prescription was filled at the central fill pharmacy, as well as the data elements itemized above in Subsection B.7.a.

c. The requirements of Subsection B.7.a shall not apply when a controlled substance listed in Schedule II is prescribed for administration to an ultimate user who is institutionalized, provided that:

i. no more than a seven-day supply of the medication is dispensed at one time;

ii. the medication is not in the possession of the ultimate user prior to the administration;

iii. the institution maintains appropriate safeguards and records regarding the proper administration, control, dispensing, and storage of controlled substances listed in Schedule II; and

iv. the system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product, and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

d. After dispensing a prescription for a controlled substance listed in Schedule II, the pharmacist shall cancel the prescription by defacing the prescription form and recording his name or initials on the form.

e. All written prescriptions and written records of emergency oral prescriptions shall be maintained in accordance with the requirements of §2731.B.7.

8. Provision of Prescription Information between Retail Pharmacies and Central Fill Pharmacies. Prescription information may be provided to an authorized central fill pharmacy by a retail pharmacy for dispensing purposes. The following requirements shall apply.

a. Prescriptions for controlled substances listed in Schedule II may be transmitted electronically from a retail pharmacy to a central fill pharmacy, including via facsimile. The retail pharmacy transmitting the prescription information shall:

i. record the words "CENTRAL FILL" on the face of the original prescription and record the name, address and DEA registration number of the central fill pharmacy to which the prescription has been transmitted, the name of the retail pharmacy pharmacist transmitting the prescription, and the date of transmittal;

ii. ensure that all information required to be on a prescription pursuant to §2745.C is transmitted to the central fill pharmacy (either on the face of the prescription or in the electronic transmission of information);

iii. maintain the original prescription for a period of two years from the date the prescription was filled;

iv. keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common or contract carrier) and the name of the retail pharmacy employee accepting delivery.

b. The central fill pharmacy receiving the transmitted prescription shall:

i. keep a copy of the prescription (if sent via facsimile) or an electronic record of all the information transmitted by the retail pharmacy, including the name, address and DEA registration number of the retail pharmacy transmitting the prescription;

ii. keep a record of the date of receipt of the transmitted prescription, the name of the pharmacist dispensing the prescription, and the date of dispensing of the prescription;

iii. keep a record of the date the dispensed prescription was delivered to the retail pharmacy and the method of delivery (private, common or contract carrier).

C. Prescriptions for Controlled Substances Listed in Schedule III, IV, or V

1. Oral Prescriptions. Upon the receipt of an oral prescription from a prescriber or his agent, the pharmacist shall immediately reduce the prescription information to written form. The pharmacist may then dispense the prescription and file the written record in his prescription files.

2. Prescriptions Received by Facsimile Equipment

a. The facsimile equipment designated for the receipt of prescriptions shall be located within a prescription department in a pharmacy. The paper or other media used in the facsimile equipment designated for the receipt of prescriptions shall be non-fading and technically capable of providing a legible prescription.

b. The facsimile may serve as the original prescription form. After dispensing the prescription, the pharmacist shall file the facsimile prescription form in his prescription files.

c. In the event the facsimile transmission does not clearly identify the prescriber's office or other authorized location as the point of origin of the transmission, the pharmacist shall verify the authenticity of the prescription prior to dispensing the controlled substance.

3. Expiration Date. A pharmacist shall not dispense a prescription for a controlled substance listed in Schedule III, IV, or V more than six months after the date of issue. Further, when the number of refills authorized by the prescribing practitioner on the original prescription form have been dispensed, the prescription has expired; the pharmacist shall not dispense any further medication pursuant to that expired prescription.

4. Refilling of Prescriptions

a. No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times.

b. Each refilling of a prescription shall be entered on the back of the prescription or on another appropriate

document. If entered on another document, such as a medication record, the document shall be uniformly maintained and readily retrievable. The following information shall be retrievable by the prescription number: name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, initials of the dispensing pharmacist for each refill, and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

c. As an alternative to the procedures described in Subparagraph C.4.b of this Section, an automated data processing system may be used for the storage and retrieval of refill information for prescription orders for controlled substances in Schedule III, IV, and V, subject to the following conditions.

i. Any such proposed computerized system must provide on-line retrieval (via CRT display or hard-copy printout) of original prescription order information for those prescription orders which are currently authorized for refilling. This shall include, but is not limited to, data such as the original prescription number, date of issuance of the original prescription order by the practitioner, full name and address of the patient, name, address, and DEA registration number of the practitioner, and the name, strength, dosage form, and quantity of the controlled substance prescribed (and quantity dispensed if different from the quantity prescribed), and the total number of refills authorized by the prescribing practitioner.

ii. Any such proposed computerized system must also provide on-line retrieval (via CRT display or hard-copy printout) of the current refill history for Schedule III, IV, or V controlled substance prescription orders (those authorized for refill during the past six months). This refill history shall include, but is not limited to, the name of the controlled substance, the date of refill, the quantity dispensed, the identification code, or name or initials of the dispensing pharmacist for each refill and the total number of refills dispensed to date for that prescription order.

iii. Documentation of the fact that the refill information entered into the computer each time a pharmacist refills an original prescription order for a Schedule III, IV, or V controlled substance is correct must be provided by the individual pharmacist who makes use of such a system. If such a system provides a hard-copy printout of each day's controlled substance orders refill data, that printout shall be verified, dated, and signed by the individual pharmacist who refilled such a prescription order. The individual pharmacist shall verify that the data indicated is correct and then sign this document. This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order refill data shall be provided to each pharmacy using such a computerized system within 72 hours of the date on which the refill was dispensed. The printout shall be verified and signed by each pharmacist who is involved with such dispensing. In lieu of such a printout, the pharmacy shall maintain a bound logbook, or separate file, in which each individual pharmacist involved in such dispensing shall sign a statement (in the manner previously described) each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by him and is correct as shown. Such a book or file shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing the appropriately authorized refill.

iv. Any such computerized system shall have the capability of producing a printout of any refill data which the user pharmacy is responsible for maintaining. For example, this would include a refill-by-refill audit trail for any specified strength and dosage form of any controlled substance (by either brand or generic name, or both). Such a printout shall include the name of the prescribing practitioner, name and address of the patient, quantity dispensed on each refill, date of dispensing for each refill, name or identification code of the dispensing pharmacist, and the prescription number. In any computerized system employed by a user pharmacy, the central recordkeeping location must be capable of sending the printout to the pharmacy within 48 hours. If the board or an agent of the board requests a copy of such printout from the user pharmacy, the pharmacy shall verify the printout transmittal capability of its system by documentation, e.g., postmark.

v. In the event that a pharmacy which employs such a computerized system experiences system down-time, the pharmacy shall have an auxiliary procedure which will be used for documentation of refills on prescriptions for controlled substances listed in Schedule III, IV, or V. This auxiliary procedure shall insure that refills are authorized by the original prescription order, that the maximum number of refills has not been exceeded, and that all of the appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

5. Partial Filling of Prescriptions. The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible, provided that:

a. the information (and the manner in which it is recorded) for a partial filling is the same as that required for a refill;

b. the number of partial fillings is not limited; however, the total quantity dispensed in all partial fillings shall not exceed the total quantity authorized on the original prescription. The total quantity authorized may be calculated as the sum of:

i. the quantity prescribed; and

ii. the calculated amount of the quantity prescribed times the number of refills originally authorized by the prescriber;

c. no dispensing shall occur more than six months after the date on which the prescription was issued.

6. Labeling of Medications and Filing of Prescriptions

a. The pharmacist dispensing a prescription for a controlled substance listed in Schedule III, IV, or V shall affix to the package a dispensing label containing the following data elements:

i. name, address and telephone number of the pharmacy;

ii. prescription number;

iii. date of dispensing;

iv. prescribing practitioner's name;

v. patient's name;

vi. drug name and strength;

vii. directions for use;

viii. pharmacist's name or initials;

ix. for controlled substances listed in Schedules III or IV, the following warning statement:

"Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed", provided however, that this statement shall not be required to appear on the label of a controlled substance dispensed for use in clinical investigations which are "blind."

x. other cautionary or auxiliary labels as applicable.

b. If the prescription is dispensed at a central fill pharmacy, the pharmacist at the central fill pharmacy shall affix to the package a label showing the name and address of the retail pharmacy and a unique identifier (i.e., the central fill pharmacy"s DEA registration number) indicating the prescription was filled at the central fill pharmacy, as well as the data elements itemized above in Subparagraph C.6.a of this Section.

c. The requirements of Subparagraph C.6.a of this Section shall not apply when a controlled substance listed in Schedule III, IV, or V is prescribed for administration to an ultimate user who is institutionalized, provided that:

i. no more than a 34-day supply, or 100 dosage units, whichever is less, is dispensed at one time;

ii. the medication is not in the possession of the ultimate user prior to the administration;

iii. the institution maintains appropriate safeguards and records regarding the proper administration, control, dispensing, and storage of controlled substances listed in Schedule III, IV, and V; and

iv. the system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product, and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

d. After dispensing an original prescription for a controlled substance listed in Schedule III, IV, or V, the pharmacist shall record his name or initials on the form.

e. All prescription forms shall be maintained in accordance with the requirements of §2731.B.7.

7. Transfer between pharmacies of prescription information for Schedule III, IV, or V for refill purposes

a. The transfer of prescription information for a controlled substance listed in Schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber’s authorization, whether or not the pharmacy from which the prescription is transferred is open for business. Transfers are subject to the following requirements.

i. The transfer is communicated directly between two licensed pharmacists and the transferring pharmacist records the following information:

(a). invalidation of the prescription;

(b). on the reverse of the invalidated prescription, the name, address, and DEA registration number of the pharmacy to which it was transferred, and the name of the pharmacist receiving the prescription information;

(c). the date of the transfer and the name of the pharmacist transferring the information.

ii. The pharmacist receiving the transferred prescription information shall reduce to writing the following:

(a). indication of the transferred nature of the prescription;

(b). provide all information required for a prescription for a controlled substance (full name and address of the patient; drug name, strength, and dosage form; quantity prescribed and directions for use; and the name, address, telephone number, and DEA registration number of the prescribing practitioner) and include:

(i). date of issuance of original prescription;

(ii). original number of refills authorized on original prescription;

(iii). date of original dispensing;

(iv). number of valid refills remaining and date(s) and locations of previous refill(s);

(v). pharmacy's name, address, and DEA registration number and prescription number from which the prescription information was transferred;

(vi). name of pharmacist who transferred the prescription; and

(vii). pharmacy's name, address, and DEA registration number and prescription number from which the prescription was originally filled.

iii. The original and transferred prescription(s) shall be maintained for a period of two years from the date of the last refill.

iv. Pharmacies electronically accessing the same prescription record shall satisfy all information requirements of a manual mode for prescription transferal.

8. Provision of Prescription Information between Retail Pharmacies and Central Fill Pharmacies. Prescription information may be provided to an authorized central fill pharmacy by a retail pharmacy for dispensing purposes. The following requirements shall apply.

a. Prescriptions for controlled substances listed in Schedule III, IV, or V may be transmitted electronically from a retail pharmacy to a central fill pharmacy, including via facsimile. The retail pharmacy transmitting the prescription information shall:

i. record the words "CENTRAL FILL" on the face of the original prescription and record the name, address and DEA registration number of the central fill pharmacy to which the prescription has been transmitted, the name of the retail pharmacy pharmacist transmitting the prescription, and the date of transmittal;

ii. ensure that all information required to on a prescription pursuant to §2745.C is transmitted to the central fill pharmacy (either on the face of the prescription or in the electronic transmission of information);

iii. indicate in the information transmittal the number of refills already dispensed and the number of refills remaining;

iv. maintain the original prescription for a period of two years from the date the prescription was last refilled;

v. keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common or contract carrier) and the name of the retail pharmacy employee accepting delivery.

b. The central fill pharmacy receiving the transmitted prescription shall:

i. keep a copy of the prescription (if sent via facsimile) or an electronic record of all the information transmitted by the retail pharmacy, including the name, address and DEA registration number of the retail pharmacy transmitting the prescription;

ii. keep a record of the date of receipt of the transmitted prescription, the name of the pharmacist dispensing the prescription, and the dates of filling or refilling of the prescription;

iii. keep a record of the date the dispensed prescription was delivered to the retail pharmacy and the method of delivery (private, common or contract carrier).

D. Dispensing Controlled Substances without a Prescription. A controlled substance listed in Schedule II, III, IV, or V which is not a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

1. such dispensing is made only by a pharmacist, and not by a non-pharmacist employee even if under the supervision of a pharmacist, although after the pharmacist has fulfilled his professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a non-pharmacist;

2. not more than 240 milliliters, or 8 ounces, of any such controlled substance containing opium, nor more than 120 milliliters, or 4 ounces, of any other such controlled substance, nor more than 48 dosage units of any such controlled substance containing opium, nor more than 24 dosage units of any other such controlled substance may be dispensed at retail to the same purchaser in any given 48-hour period;

3. the purchaser is at least 18 years of age;

4. the pharmacist requires every purchaser of a controlled substance under this paragraph not known to him to furnish suitable identification (including proof of age where appropriate);

5. a bound record book for dispensing of controlled substances under this paragraph is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the controlled substance to the purchaser; further, this book shall be maintained in conformance with the recordkeeping requirements identified in §2731.B.7.

6. A prescription is not required for dispensing of the controlled substance pursuant to any federal or state law.

7. Central fill pharmacies may not dispense controlled substances to a purchaser at retail pursuant to this Paragraph.

E. Professional Conduct. A license, registration, certification, permit, or any other credential deemed necessary to practice, or assist in the practice of, pharmacy may be subject to discipline when deviating from primary or corresponding responsibility to avert the following prohibited acts.

1. Primary responsibility:

a. drug diversion—attempted, actual or conspired dispensing, distributing, administering, or manufacturing of a controlled substance not pursuant to a valid prescription or order while acting in the course of professional pharmacy practice is prohibited; or

b. possession—actual or conspired possession of a controlled substance not pursuant to a valid prescription or order issued for a legitimate medical purpose by an authorized practitioner in the usual course of professional practice.

2. Corresponding Responsibility

a. Medical Purpose. The prescribing practitioner has the primary responsibility to issue a prescription for a controlled substance for a legitimate medical purpose, but a corresponding responsibility rests with the pharmacist or dispensing physician dispensing said prescription to ascertain that said prescription was issued for a legitimate medical purpose in the usual course of professional practice.

b. Authenticity. A pharmacist or dispensing physician shall exercise sound professional judgment to ascertain the validity of prescriptions for controlled substances. If, in the pharmacist's professional judgment, a prescription is not valid, said prescription shall not be dispensed.

3. Forged Prescriptions. It is unlawful to forge a prescription, or to dispense a forged prescription, for a controlled substance. The pharmacist or dispensing physician shall exercise professional diligence in determining the validity of a prescription as to the practitioner's authority and/or patient's identity, in order to prevent misrepresentation, fraud, deception, subterfuge, conspiracy, or diversion of controlled substances.

4. Altered Prescriptions. It is unlawful to personally alter a prescription, or to dispense an altered prescription, for a controlled substance, except as provided by §2747.B.4 of this Chapter.

F. Accountability. The pharmacist-in-charge, the owner of a pharmacy permit, and/or other designated responsible parties, shall be accountable for shortages of controlled substances or inconsistencies indicated in an audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2749. Disposal of Controlled Substances

A. Any person in possession of any controlled substance and desiring or required to dispose of such substance may request assistance from the special agent in charge of the DEA in the area in which the person is located for authority and instructions to dispose of such substance. The request should be made as follows:

1. if the person is a licensee, he shall list the controlled substance or substances which he desires to dispose of on DEA Form 41, and submit three copies of that form to the special agent in charge in his area; or

2. if the person is not a licensee, he shall submit to the special agent in charge a letter stating:

a. the name and address of the person;

b. the name and quantity of each controlled substance to be disposed of;

c. how the applicant obtained the substance, if known; and

d. the name, address, and registration number, if known, of the person who possessed the controlled substances prior to the applicant, if known.

B. The special agent in charge shall authorize and instruct the applicant to dispose of the controlled substance in one of the following manners:

1. by transfer to person licensed by the board and authorized to possess the substance;

2. by delivery to an agent of the DEA or to the nearest office of the DEA;

3. by destruction in the presence of an agent of the DEA or other authorized person; or

4. by such other means as the special agent in charge may determine to assure that the substance does not become available to unauthorized persons.

C. In the event that a licensee is required regularly to dispose of controlled substances, the special agent in charge may authorize the licensee to dispose of such substances, in accordance with this Section, without prior approval of the DEA in each instance, on the condition that the licensee keep records of such disposals and file periodic reports with the special agent in charge summarizing the disposals made by the licensee. In granting such authority, the special agent in charge may place such conditions as he deems proper on the disposal of controlled substances, including the method of disposal and the frequency and detail of reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2751. Distributions and Transfers of Controlled Substances

A. Distribution by Dispenser to Another Practitioner or Reverse Distributor

1. A dispenser may distribute (without being registered to distribute) a quantity of such controlled substance to:

a. another practitioner for the purpose of general dispensing by the practitioner to patients, provided that:

i. the receiving practitioner is authorized to dispense that controlled substance;

ii. the distribution is recorded by the dispenser and the receiving practitioner, in accordance with §2735.B of this Chapter;

iii. a DEA 222 order form is used as required for controlled substances listed in Schedule II; and

iv. the total number of dosage units of all controlled substances distributed by the dispenser pursuant to this Section during each calendar year shall not exceed 5 percent of the total number of dosage units distributed and dispensed by the dispenser during the same calendar year;

b. a reverse distributor who is authorized to receive such controlled substances.

2. If, during any calendar year the dispenser has reason to believe the total number of dosage units of all controlled substances which will be distributed by him pursuant to this Section will exceed 5 percent of his total number of dosage units of all controlled substances distributed and dispensed by him during that calendar year, the dispenser shall obtain a license to distribute controlled substances.

3. The distributions made by a retail pharmacy to automated dispensing systems at long term care facilities for which the retail pharmacy also holds registrations shall not count toward the 5 percent limit described in this Section.

B. Distribution to Supplier or Manufacturer

1. Any person lawfully in possession of a controlled substance listed in any schedule may distribute (without being registered to distribute) that substance to the person from whom he obtained it or to the manufacturer of the controlled substance, or if designated, to the manufacturer's registered agent or accepting returns, provided that a written record is maintained which indicates the date of the transaction, the name, form and quantity of the controlled substance, the name, address, and DEA Registration Number, if any, of the person making the distribution, and the name, address, and DEA registration number of the supplier or manufacturer. In the case of returning a controlled substance listed in Schedule I or II, a DEA 222 order form shall be used and maintained as the written record of the transaction. Any person not required to register shall be exempt from maintaining the records required by this Section.

2. Distributions referred to in this Subsection may be made through a freight forwarding facility operated by the person to whom the controlled substance is being returned, provided that prior arrangement has been made for the return and the person making the distribution delivers the controlled substance directly to an agent or employee of the person to whom the controlled substance is being returned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

Subchapter G. Administrative Procedures

§2753. Inspections

A. The board may inspect any licensed facility or location of a licensed person including pertinent records for the purpose of determining compliance with the requirements of this Chapter and other state and federal laws and regulations related to controlled substances, subject to the limitations identified in R.S. 40:988.B and R.S. 40:988.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2755. Seizures

A. The board may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee at the time his license is suspended or revoked, for a licensee’s failure to timely renew his license, or at the time the board refuses to renew his license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

§2757. Hearings

A. All formal administrative hearings conducted by the board shall be conducted in accordance with the Louisiana Administrative Procedures Act, R.S. 49:950 et seq., and §2711 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:

Chapter 31. Illegal Payments; Required Disclosures of Financial Interests

Editor's Note: Chapter 31 has been moved from Chapter 27.

Subchapter A. General Information

§3101. Scope and Purpose of Chapter [Formerly §2701]

A. Scope of Chapter. The rules of this Chapter interpret, implement, and provide for the enforcement of R.S. 37:1744 and R.S. 37:1745, or their successors, requiring disclosure of a pharmacist's financial interest in another health care provider to whom or to which the pharmacist refers a patient and prohibiting certain payments in return for referring or soliciting patients.

B. Declaration of Purpose; Interpretation and Application. Pharmacists owe a fiduciary duty to patients to exercise their professional judgment in the best interests of their patients in providing, furnishing, recommending, or referring patients for health care items or services. The purpose of these rules and the laws they implement is to prevent payments by or to a pharmacist as a financial incentive for the referral of patients to a pharmacist or other health care provider for healthcare services or items. These rules shall be interpreted, construed, and applied so as to give effect to such purposes and intent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2112 (October 2003), effective January 1, 2004, repromulgated LR 34:

§3103. Definitions [Formerly §2703]

A. As used in this Chapter, the following terms have the meaning ascribed to them by this Section.

Board—the Louisiana Board of Pharmacy.

Financial Interest—a significant ownership or investment interest established through debt, equity, or other means and held, directly or indirectly, by a pharmacist or a member of a pharmacist's immediate family, or any form of direct or indirect remuneration for referral.

Group Practice—a group of two or more pharmacists and/or other health care providers legally organized as a general partnership, registered limited liability partnership, professional medical corporation, limited liability company, foundation, nonprofit corporation, faculty practice plan, or similar organization or association:

a. in which each pharmacist who is a member of the group provides substantially the full range of services which the pharmacist routinely provides;

b. for which substantially all of the services of the pharmacists who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group;

c. in which no pharmacist who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the pharmacist, except payment of a share of the overall profits of the group, which may include a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share of profits or bonus is not determined in any manner which is directly related to the volume or value of referrals by such pharmacist; and

d. in the case of a faculty practice plan associated with a hospital, institution of higher education, or pharmacy school with an approved training program in which pharmacist members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, solely with respect to services provided within such faculty practice plan.

Health Care Item—any substance, product, device, equipment, supplies, or other tangible good or article which is or may be used or useful in the provision of health care.

Health Care Provider—any person, partnership, corporation, or association licensed by a department, board, commission, or other agency of the state of Louisiana to provide, or which does in fact provide preventive, diagnostic, or therapeutic health care services or items.

Immediate Family—as respects a pharmacist, the pharmacist's spouse, children, parents, siblings, stepchildren, stepparents, in-laws, grandchildren and grandparents.

Investment Interest—a security issued by an entity, including, without limitation, shares in a corporation, interests in or units of a partnership or limited liability company, bonds, debentures, notes, or other debt instruments.

Payment—transfer or provision of money, goods, services, or anything of economic value.

Person—as defined in R.S. 37:1164(33) or its successor.

Pharmacist—any individual currently licensed by the *board* to engage in the practice of pharmacy in the state of Louisiana.

Pharmacy—any place where drugs are dispensed and *pharmacy* primary care is provided.

Referral—any direction, recommendation, or suggestion given by a health care provider to a patient, directly or indirectly, which is likely to determine, control, or influence the patient's choice of another health care provider for the provision of health care services or items.

Remuneration for Referral—any arrangement or scheme, involving any remuneration, directly or indirectly, in cash or in kind, between a pharmacist, or an immediate family member of such pharmacist, and another health care provider that is intended to induce referrals by the pharmacist to the health care provider or by the health care provider to the pharmacist, other than any amount paid by an employer to an employee who has a bona fide employment relationship with the employer, for employment in the furnishing of any health care item or service.

Significant Financial Interest—an ownership or investment interest shall be considered "significant," within the meaning of §3113, if such interest satisfies any of the following tests:

a. such interest, in dollar amount or value, represents 5 percent or more of the ownership or investment interests of the health care provider in which such interest is held; or

b. such interest represents 5 percent or more of the voting securities of the health care provider in which such interest is held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October

1988), effective January 1, 1989, amended LR 29:2112 (October 2003), effective January 1, 2004, repromulgated LR 34:

Subchapter B. Illegal Payments

§3105. Prohibition of Payments for Referrals [Formerly §2705]

A. A pharmacist or pharmacy shall not knowingly and willfully make, or offer to make, any payment, directly or indirectly, overtly or covertly, in cash or in kind, to induce another person to refer an individual to the pharmacist for the furnishing, or arranging for the furnishing, of any health care item or service.

B. A pharmacist or pharmacy shall not knowingly and willfully solicit, receive, or accept any payment, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring a patient to a health care provider for the furnishing, or arranging for the furnishing, of any health care item or service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:

§3107. Prohibited Arrangements [Formerly §2707]

A. Any arrangement or scheme, including cross-referral arrangements, which a pharmacist or pharmacy knows or should know has a principal purpose of ensuring or inducing referrals by the pharmacist to another health care provider, which, if made directly by the pharmacist or pharmacy would be a violation of §3113, shall constitute a violation of §3113.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:

§3109. Exceptions [Formerly §2709]

A. Proportionate Return on Investment. Payments or distributions by an entity representing a direct return on investment based upon a percentage of ownership, shall not be deemed a payment prohibited by R.S. 37:1745(B), or its successor, or §3105 of these regulations.

B. General Exceptions. Any payment, remuneration, practice, or arrangement which is not prohibited by or unlawful under §1128(b) of the Federal Social Security Act (Act), 42 U.S.C. §1320a-7b(b), or its successor, with respect to health care items or services for which payment may be made under Title XVIII or Title XIX of the Act, including those payments and practices sanctioned by the secretary of the United States Department of Health and Human Services, through the Office of the Inspector General, pursuant to §1128B(b)(3)(E) of the Act, through regulations promulgated at 42 CFR §1001.952, or its successor, shall not be deemed a payment prohibited by R.S. 37:1745(B), or its successor, or by §3105 of these rules with respect to health care items or services for which payment may be made by any patient or private or governmental payor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:

§3111 Effect of Violation [Formerly §2711]

A. Any violation of, or failure of compliance with, the prohibitions and provision of §3105 of this Chapter shall be deemed a violation of the Pharmacy Practice Act, R.S. 37:1161 et seq., providing cause for the board to sanction a person culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:

Subchapter C. Disclosure of Financial Interests in Third-Party Health Care Providers

§3113. Required Disclosure of Financial Interest [Formerly §2713]

A. Mandatory Disclosure. A pharmacist or pharmacy shall not make any referral of a patient outside the pharmacist's or pharmacy's group practice for the provision of health care items or services by another health care provider in which the referring pharmacist has a financial interest, unless, in advance of any such referral, the referring pharmacist or pharmacy discloses to the patient, in accordance with §3113 of this Chapter, the existence and nature of such financial interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:

§3115. Form of Disclosure [Formerly §2715]

A. Required Contents. The disclosure required by §3113 of this Chapter shall be made in writing, shall be furnished to the patient, or the patient's authorized representative, prior to or at the time of making the referral, and shall include:

1. the pharmacist's or pharmacy's name, address, and telephone number;

2. the name and address of the health care provider to whom the patient is being referred by the pharmacist or pharmacy;

3. the nature of the items or services which the patient is to receive from the health care provider to which the patient is being referred; and

4. the existence and nature of the pharmacist's or pharmacy's financial interest in the health care provider to which the patient is being referred.

B. Permissible Contents. The form of disclosure required by §3113 of this Chapter may include a signed acknowledgment by the patient or the patient's authorized representative that the required disclosure has been given.

C. Approved Form. Notice to a patient given substantially in the form of Disclosure of Financial Interest prescribed in §3119 of this rule shall be presumptively deemed to satisfy the disclosure requirements of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2113 (October 2003), effective January 1, 2004, repromulgated LR 34:

§3117. Effect of Violation; Sanctions [Formerly §2717]

A. Effect of Violation. Any violation of, or failure of compliance with, the prohibitions and provision of §3113 of this Chapter shall be deemed a violation of the Pharmacy

Practice Act, R.S. 37:1161 et seq., providing cause for the board to sanction a pharmacist or pharmacy culpable of such violation.

B. Administrative Sanctions. In addition to the sanctions provided for by R.S. 37:1241, upon proof of violation of §3113 by a pharmacist or pharmacy, the board may order that all or any portion of any amounts paid by a patient, and/or by any third-party payor on behalf of a patient, for health care items or services furnished upon a referral by the pharmacist or pharmacy in violation of §3113, be refunded by the pharmacist or pharmacy to such patient and/or third-party payor, together with legal interest on such payments at the rate prescribed by law calculated from the date on which any such payment was made by the patient and/or third-party payors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2114 (October 2003), effective January 1, 2004, repromulgated LR 34:

§3119. Disclosure of Financial Interest [Formerly §2719]

[Name of Pharmacist/Group]
[Address]
[Telephone Number]
DISCLOSURE OF FINANCIAL INTEREST
As Required by R.S. 37:1744 and LAC 46:LIII.613-615

TO:_____ DATE:_____

_____
(Name of Patient to Be Referred)

_____
(Patient Address)

Louisiana law requires pharmacists and other health care providers to make certain disclosures to a patient when they refer a patient to another health care provider or facility in which the pharmacist has a significant financial interest. [I am/we are] referring you, or the named patient for whom you are legal representative, to:

_____
(Name and Address of Provider to Whom Patient is Referred)

to obtain the following health care services, products, or items:

_____
(Purpose of the Referral)

[I/we] have a financial interest in the health care provider to whom we are referring you, the nature and extent of which are as follows:

_____
_____

PATIENT ACKNOWLEDGEMENT

I, the above-named patient, or legal representative of such patient, hereby acknowledge receipt, on the date indicated and prior to the described referral, of a copy of the foregoing Disclosure of Financial Interest.

_____
Signature of Patient or Patient's Representative)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2114 (October 2003), effective January 1, 2004, repromulgated LR 34:

Family Impact Statement

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

Interested persons may submit written comments to Malcolm J Broussard, Executive Director, Louisiana Board of Pharmacy, 5615 Corporate Blvd., Eighth Floor, Baton Rouge, LA 70808-2537. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, July 30, 2008 at 9 a.m. in the board office. 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 comments is 12 p.m., noon, that same day.

Malcolm J. Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Controlled Dangerous Substances

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

Prescribers and dispensers practicing in state or local governmental units, as well as facilities operated by state or local governmental units, already in possession of a Controlled Dangerous Substance (CDS) License are already required to comply with the provisions of the proposed rule. We estimate no implementation costs for these entities.

It is estimated that implementation of the proposed rule will cost the Board $13,000 in FY 08-09, for printing costs.

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

We can discern no measurable impact on revenue collections for state or local governmental units, including the Board.

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

Prescribers and dispensers, as well as facilities, already in possession of a CDS License are already required to comply with the provisions of the proposed rule. We estimate no implementation costs for these entities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

We estimate no effect on competition and employment.

Malcolm J. Broussard
Executive Director
0806#049

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Physical Therapy Examiners

Licensure, Certification, and Practice
(LAC 46:LIV.121, 127, 155, 167-173, 303-311, 315, 321, 323, 327)

Editor's Note: This Notice is being reprinted because of an error upon submission. The original Notice may be viewed in its entirety in the May 2008 edition of the *Louisiana Register* on pages 912-918.

Notice is hereby given, in accordance with R.S. 49:950 et seq., and the Administrative Procedure Act, that the

Louisiana State Board of Physical Therapy Examiners (board), pursuant to the authority vested in the board by R.S. 2401.2A(3) and the provisions of the Administrative Procedures Act, hereby amends its existing rules as set forth below.

The Louisiana State Board of Physical Therapy Examiners is proposing rule amendments to clarify the application of the Physical Therapy Practice Act. The intent of the amendments is to clarify and enhance rules applicable to the supervision of Physical Therapy Assistants and other support personnel and to provide effective documentation of such supervision. Additionally, the proposed Rule will reduce the potential for noncompliance with the Practice Act, thusly decreasing any potential expenses for disciplinary actions or loss of income as a result of disciplinary actions. Licensees and employers may incur a small indeterminable increase in costs for documenting supervision conferences in patient records as a result of the proposed Rule.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIV. Physical Therapy Examiners
Subpart 1. Licensing and Certification
Chapter 1. Physical Therapists and Physical Therapist Assistants
Subchapter D. Licensure by Reciprocity
§121. Qualifications for Licensure by Reciprocity

A. ...

B. A foreign physical therapy graduate who meets the requirements of Subsections 115.A and 121.A and who has practiced as a licensed physical therapist in another state for at least one year, may, with acceptable documentation of clinical experience, be eligible for licensure by reciprocity as a physical therapist at the discretion of the board. Licensure under this Subsection waives the period of supervised clinical practice set forth in Paragraph 115.A.3 of these rules.

C. To be eligible for licensure under Subsections A and B, all applicants shall have met the continuing education requirements contained in the Practice Act and/or the board rules within the 12 months preceding their application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 34:

Subchapter E. Application
§127. Additional Requirements for Foreign Graduates

A. ...

B. As a condition to the board's consideration of a foreign graduate application, the board must receive a comprehensive credential evaluation certificate, based upon the Credentialing Coursework Tool, from an approved credentialing agency which includes, but is not limited to, the Foreign Credentialing Commission on Physical Therapy (FCCPT).

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), LR 26:1444 (July 2000), LR 34:

Subchapter G. Temporary Permit
§155. Permit Pending Re-Examination; Examination Limit; Additional Requirements

A. An applicant who possesses all of the qualifications for licensure prescribed by §107 of this Chapter, except for Paragraphs 107.A.5 and 107.B.5, who has once failed the licensing examination, and who has applied to the board for re-examination within 10 days of receipt of written notice of failure and completed all requirements for re-examination shall be issued a new temporary permit to be effective for no more than 60 days.

B. If an applicant has failed to achieve a passing score on the required examination after three attempts, the applicant may again be examined only upon the board's approval, which approval may be conditioned upon the prior successful completion by the applicant of any additional education or clinical training prescribed by the board.

C. A physical therapist or physical therapist assistant holding a temporary permit issued under this Section may practice physical therapy only with continuous supervision as defined in Subsection 305.A.

D. A temporary permit issued under this Section shall expire upon the earliest of:

1. the expiration of the time period for which the permit was issued;

2. actual receipt by the permit holder of notice from the board that he has failed to achieve a passing score on the licensing examination;

3. the licensee's failure to claim notice of his failure, which was mailed to the licensee by certified mail, return receipt requested, within the time allowed after being notified by the United States Postal Service; or

4. failure of a permit holder to appear for and take the licensing examination within the 60 day permit period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 731 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), LR 26:1446 (July 2000), LR 34:

Subchapter H. License and Permit Issuance, Termination, Renewal and Reinstatement
§167. Reinstatement of License

A. - C.2. ...

D. To be eligible for license reinstatement under this Section, all applicants shall have met the continuing education requirements contained in the rules within the 12 months preceding their application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy

Examiners, LR 15:388 (May 1989), LR 28:1979 (September 2002), LR 34:

Subchapter I. Continuing Education

§169. Requirements

A. Unless exempted under §173, licensees shall successfully complete, document and report to the board at least 1.2 units, or 12 hours of acceptable continuing education credit during each calendar year.

B. - B.3.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 731 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 26:1446 (July 2000), LR 28:1980 (September 2002), LR 34:

§171. Report Requirements

A. It is the responsibility of each licensee to assure that his continuing education hours are timely reported to the board.

B. The reporting of continuing education hours by course sponsors or licensees shall be made only on forms approved and available by the board. Forms filed by course sponsors or licensees shall be legibly printed or typewritten, and shall be completed and signed by the course sponsor or licensee.

C. Continuing education reporting forms shall be filed with the board no later than December 31 of each year.

D.1. The filing date of continuing education reporting forms, if mailed and properly addressed to the board with sufficient postage, shall be the earliest of:

a. the legible date of the United States Postal Service postmark; or

b. an official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof; or

c. the date of actual receipt by the board.

2. Legal holidays and days on which the office of the board is officially closed shall not extend the filing deadline specified in Subsection C hereof.

E. Original continuing education documentation, including, but not limited to, certificates of participation, signed by course instructors verifying course attendance and completion, and official college coursework transcripts shall be retained by course sponsors and licensees for a period of three years. Upon request, course sponsors and licensees shall supply the board with such documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:665 (July 1991), amended LR 19:208 (February 1993), LR 34:

§173. Exemptions

A. Physical therapists or physical therapist assistants licensed in Louisiana are exempt from the Subchapter I continuing education requirements during the calendar year in which they graduate from a program accredited pursuant to the Practice Act.

B. Upon approval by the board of a request made in compliance with Subsection C, the board may extend the period for compliance or exempt the following from compliance with the Subchapter I continuing education requirements:

1. licensees on extended active military service for a period in excess of three months during the applicable reporting period; or

2. licensees who are unable to fulfill the requirement because of illness or other personal hardship.

C. Written requests for an exemption under Subsection B, including supporting documentation, must be received by the board at least 90 days prior to the end of the calendar year for which the exemption is sought, or immediately after the licensee becomes aware of the facts or circumstances upon which the exemption is sought, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 731 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:665 (July 1991), amended LR 19:208 (February 1993), LR 21:394 (April 1995), LR 34:

Subpart 2. Practice

Chapter 3. Practice

Subchapter A. General Provisions

§303. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meanings specified.

* * *

Nursing Home—place of residence and not a health care facility.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 21:394 (April 1995), LR 24:39 (January 1998), LR 34:

§305. Special Definition: Practice of Physical Therapy

A. As used in the definition of *practice of physical therapy* set forth in the Physical Therapy Practice Act, and as used in this Chapter, the following terms shall have their meanings specified.

Consultative Services—providing information, advice, or recommendations with respect to physical therapy, but does not include the administration of physical therapy treatment, and therefore, can be performed without referral or prescription.

Continuous Supervision—responsible, continuous, on-the-premises observation and supervision by a licensed physical therapist of the procedures, functions and practice rendered by a physical therapy technician; student; physical therapist assistant permittee pending licensure by examination or re-examination; and physical therapist temporary permittee who has once failed the licensing examination.

On Premises—that the supervising physical therapist is personally present in the treating facility and immediately available to the treatment area.

Passive Manipulation—manipulation or movement of muscular or joints other than by the spontaneous function of the body or active effort on the part of the patient.

Periodic Supervision—as related to:

a. *temporary permit* holders who are graduates of APTA accredited programs, shall mean:

i. daily face to face or phone communication between the supervising physical therapist and permit holders; and

ii. on premises observation of patient care in each of the permittees' practice locations, a minimum of two hours per day with a minimum total of 10 hours per week;

b. foreign physical therapy graduates, holding a temporary permit, shall mean daily face to face communication and on premises observation of patient care in each of the permittees' practice settings for at least 1/2 of the hours worked each day until the permittee passes the licensing exam. After passing the examination, the permittee shall require on premises observation of patient care in each practice setting a minimum of one hour per day with a minimum total of five hours per week. If the permittee fails the examination on his first attempt, he shall require continuous supervision;

c. licensed physical therapist assistants and physical therapist assistant permittees pending approval of licensure by reciprocity shall vary according to the treatment facility as outlined in §321.

Physical Therapy Evaluation—the evaluation of a patient by the use of physical and mental findings, objective tests and measurements, patient history, and their interpretation, to determine musculoskeletal and biomechanical limitations, to determine his suitability for and the potential efficacy of physical therapy and the establishment or modification of treatment goals and a physical therapy treatment program.

Physical Therapy Supportive Personnel—

a. *Physical Therapy Technician*—a worker not licensed by this board who functions in a physical therapy clinic, department or business and assists with preparation of the patients for treatment and with limited patient care;

b. *Physical Therapist Assistant*—a person licensed by the board who is a graduate of an associate degree program in physical therapist assisting accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE) or was granted licensure pursuant to R.S. 37:2403.D;

c. the level of responsibility assigned to physical therapy supportive personnel is at the discretion of the physical therapist, who is ultimately responsible for the care provided by these individuals. Supportive personnel may perform only those functions for which they have documented training and skills. The prohibitions for physical therapy supportive personnel shall include, but not be limited to, interpretation of referrals; performance of evaluations; initiation or adjustment of treatment programs; assumption of the responsibility for planning patient care; or any other matters as determined by the board. The physical therapist shall only delegate portions of the treatment session to a technician only after the therapist has assessed the patient's status.

Preventative Services—the use of physical therapy knowledge and skills by a physical therapist to provide education or activities in a wellness setting for the purpose of injury prevention, reduction of stress and/or the promotion of fitness, but does not include the administrations of physical therapy treatment and, therefore, can be performed without referral or prescription.

Topical Agents/Aerosols—topical medications or aerosols used in wound care which are obtained over the counter or by physician prescription or order.

Wound Care and Debridement—a physical therapist, physical therapist permittee or student physical therapist may perform wound debridement and wound management that includes, but is not limited to, sharps debridement, debridement with other agents, dry dressings, wet dressings, topical agents including enzymes, and hydrotherapy. A physical therapist assistant, physical therapist assistant permittee or student physical therapist assistant shall not perform sharps debridement. The board's licensees and permittees, as well as students and supportive personnel, shall comply with the supervision requirements set forth in §321.

Written Treatment Plan or Program—written statements made by a physical therapist that specify the measurable goals, specific treatment to be used, and proposed duration and frequency of treatment. The written treatment plan or program is an integral component of a physical therapy evaluation, however, the written treatment plan or program must be completed by the physical therapist prior to delegation of appropriate treatment of a physical therapist assistant.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:666 (July 1991), LR 19:208 (February 1993), LR 21:1243 (November 1995), LR 24:40 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:

Subchapter B. Prohibitions

§307. Unauthorized Practice

A. ...

B. A physical therapist shall exercise sound professional judgment based upon his knowledge, skill, education, training, and experience, and shall perform only those procedures for which he is competent. If diagnostically or otherwise the physical therapist becomes aware of findings and/or the need for treatment which are outside the scope of the physical therapist's knowledge, experience, or expertise, the physical therapist shall notify the patient/client and refer the patient/client to an appropriate practitioner.

C. A physical therapist shall use the letters "P.T." in connection with his name or place of business to denote licensure. A physical therapist assistant shall use the letters "P.T.A." in connection with his name to denote licensure. No person shall hold himself out to the public, an individual patient, a physician, dentist or podiatrist, or to any insurer or indemnity company or association or governmental authority as a physical therapist, physiotherapist or physical therapist assistant, nor shall any person directly or indirectly identify or designate himself as a physical therapist, physiotherapist, registered physical therapist, licensed physical therapist, physical therapist assistant, or licensed physical therapist assistant, nor use in connection with his name the letters, P.T., L.P.T., R.P.T., or P.T.A., or any other words, letters, abbreviations, insignias, or sign tending to indicate or imply that the person constitutes physical therapy, unless such

person possesses a current license or temporary permit duly issued by the board.

D. A physical therapy student who is pursuing a course of study leading to a degree as a physical therapist in a professional education program approved by the board as is satisfying supervised clinical education requirements related to his physical therapy education shall use the letters "S.P.T." in connection with his name while participating in this program. A physical therapist assistant student who is pursuing a course of study leading to a degree as a physical therapist assistant in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapist assisting education shall use the letters "S.P.T.A." in connection with his name while participating in this program.

E. A licensed physical therapist is authorized to engage in the practice of physical therapy as set forth in the Physical Therapy Practice Act and the board's rules which includes, but is not limited to, the performance of physical therapy evaluations, consultative services, wound care and debridement, the storage and administration of aerosol and topical agents, the performance of passive manipulation, and preventative services all as more fully defined in §305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:1447 (July 2000), LR 34:

§309. Exemptions

A. The prohibitions of §307 of this Chapter shall not apply to a person employed by any department, agency, or bureau of the United States Government when acting within the course and scope of such employment, nor shall they prohibit a person from acting under and within the scope of a license issued by an agency of the state of Louisiana.

B. A student shall be exempt from licensure when pursuing a course of study leading to a degree in physical therapy or physical therapist assisting in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 24:40 (January 1998), LR 34:

§311. Prohibitions: Licensed or Temporary Permit Physical Therapists

A. A physical therapist shall not:

1. - 3. ...

4. undertake to concurrently supervise more than three physical therapy technicians and/or physical therapist assistants, so that the ratio of supportive personnel to supervising licensed physical therapists is not in excess of three-to-one.

B. A physical therapist shall not abuse or exploit the physical therapy provider/patient or client relationship, or his relationship with peers or subordinates for any purpose, including for the purpose of securing personal compensation, gratification, or gain or benefit of any kind or type, any or all of which are unrelated to the provision of physical therapy services, including engaging in inappropriate sexual or inappropriately intimate conduct, which shall include, but not be limited to:

1. engaging in or soliciting a sexual or inappropriately intimate relationship, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient or client relationship exists. Termination of the physical therapist/patient or client relationship does not eliminate the possibility that a sexual or inappropriately intimate relationship may exploit the vulnerability of the former patient/client;

2. making sexual advances, requesting or offering sexual favors or engaging in any other verbal conduct or physical contact of a sexual or inappropriately intimate nature with patients or clients; or

3. intentionally viewing a completely or partially disrobed patient in the course of treatment, if such viewing is not reasonably related to patient diagnosis or treatment under current practice standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 731 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:667 (July 1991), LR 19:208 (February 1993), LR 21:1243 (November 1995), LR 34:

Subchapter C. Supervised Practice

§315. Scope of Chapter

A. ...

B. Before working in a school or home health setting, a physical therapist assistant shall have one year of supervised work experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 731 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Services, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 34:

§321. Supervision Requirements

A. Licensed Physical Therapist Assistant

1. The level of responsibility assigned to the physical therapist assistant pursuant to §321.A is at the discretion of the physical therapist who is ultimately responsible for the care provided by this individual.

2. In acute care facilities, rehabilitation facilities, skilled nursing facilities and out-patient facilities, the supervising physical therapist shall:

a. perform an evaluation and set up a written treatment plan on each patient prior to implementation of treatment;

b. treat and reassess the patient and document on at least every sixth treatment day, but not less than once per month;

c. treat and assess the patient at discharge and write a discharge summary;

d. be on premises weekly (any seven consecutive days) for at least one-half of the physical therapy treatment hours in which the physical therapist assistant is rendering physical therapy treatment;

e. be readily accessible by beeper or phone and available to the patient by the next scheduled treatment session upon request of the patient or physical therapist assistant.

3. In school and home health settings, the supervising physical therapist shall:

a. perform an evaluation and set up a written treatment plan on each patient prior to implementation of treatment;

b. treat and reassess the patient and document on at least every sixth treatment day but not less than once per month;

c. treat and assess the patient at discharge and write a discharge summary;

d. conduct, once weekly and document, a face to face patient care conference with each physical therapist assistant to review progress and modification of treatment programs for all patients;

e. be readily accessible by beeper or phone and available to the patient by the next scheduled treatment session upon request of the patient or physical therapist assistant.

4. In client preventative services rendered by a licensed physical therapist assistant, the supervising physical therapist:

a. shall perform an initial screening to determine if an individual qualifies for preventative services and document;

b. shall provide education or activities in a wellness setting through the establishment of a program for the purpose of injury prevention, reduction of stress and/or the promotion of fitness;

c. shall be readily accessible by beeper or mobile phone;

d. shall conduct and document a face to face conference with the physical therapist assistant regarding each client at least every 30 days commencing with the initiation of the preventative services for that client; and

e. may delegate only those functions to a physical therapist assistant for which he has documented training and skills.

B. - B.3. ...

C. Physical Therapy Technician

1. The level of responsibility assigned to a physical therapy technician is at the discretion of the physical therapist who is ultimately responsible for the care provided by the supervised individual(s).

2. In all practice settings, during the provision of physical therapy services, the supervising physical therapist shall provide continuous, in-person supervision of the physical therapy technician.

3. A physical therapy technician may assist a physical therapist assistant only with those aspects of patient treatment which have been assigned to the physical therapy technician by a physical therapist.

4. To ensure the safety and welfare of a patient during ambulation, transfers, or functional activities, the physical therapist assistant may utilize one or more physical therapy technicians for physical assistance.

5. The supervising physical therapist shall provide continuous, in-person supervision of client preventative services rendered by a physical therapy technician as follows:

a. perform and document an initial screening to determine if an individual qualifies for preventative services;

b. establish a wellness program, including education and activities, to promote injury prevention, reduction of stress and/or fitness;

c. delegate only those functions to a physical therapy technician for which the physical therapist has documented the training and skills of the physical therapy technician;

d. be available to the technician for direct and immediate verbal clarification.

D. Student. The supervising physical therapist shall provide continuous, on-premises supervision of a physical therapy or physical therapist assistant student in all practice settings.

E. Supervision Ratio. In any day, a supervising physical therapist shall not provide supervision for more than five individuals, nor exceed the following limitations as to supervised personnel:

1. more than three physical therapist assistants and/or technicians;

2. more than two permittees; or

3. more than five students.

F. Unavailability of Supervising Physical Therapist of Record for Permittees and Students. If, for any reason, a supervising physical therapist of record cannot fulfill his supervisory obligations:

1. for less than one week, a licensed physical therapist in good standing may supervise in his stead. In such case, the substitute physical therapist is not required to be approved by the board; however, the board approved supervisor, the substitute supervisor, as well as the supervised individual(s), shall be responsible for the care provided by those supervised;

2. for one week or more, the supervising physical therapist shall send written notification to the board for approval of a new supervising physical therapist during his period of absence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:

§323. Documentation Standards

A. A written record of physical therapy provided shall be kept on each patient or client served. A complete record shall include written documentation of prescription or referral, initial evaluation, treatment provided, P.T./P.T.A. conferences, progress notes, reassessment, and patient status at discharge.

1. - 2. ...

3. Progress note is the written documentation of the patient's subjective status, changes in objective findings, and progression or regression toward established goals. A progress note shall be written and signed by the attending physical therapist or physical therapist assistant and shall not be written or signed by a physical therapy technician. A

progress note shall be written a minimum of once per week, or if the patient is seen less frequently, then at every visit.

4. - 5. ...

6. P.T./P.T.A. conference is the written documentation of the face-to-face conference held to discuss the status of the patient seen in the home health or school settings.

7. Discharge Summary is the written documentation of the reasons for discontinuation of care, degree of goal achievement and a discharge plan which shall be written and signed by the attending physical therapist. A discharge summary shall not be written or signed by a physical therapist assistant or other supportive personnel. A discharge summary shall be written at the termination of physical therapy care.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 21:395 (April 1995), LR 26:1447 (July 2000), LR 28:1981 (September 2002), LR 34:

Subchapter D. Disciplinary Proceedings

§327. Definitions

A. - D. ...

E. As used in R.S. 37: 2413.A.7 of the Physical Therapy Practice Act, the term *unprofessional conduct* means:

1. departure from, or failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice in the state of Louisiana, regardless of whether actual injury to a patient results therefrom, including, but not limited to:

a. failure to use sound professional judgment;

b. performing procedures for which the physical therapist is not competent; or

c. failure to inform and refer the patient/client to an appropriate practitioner, when the physical therapist becomes aware of findings and/or the need for treatment which are outside the scope of the physical therapist's competence;

2. - 5. ...

6. abuse or exploitation of the physical therapy provider/patient or client relationship for the purpose of securing personal compensation, gratification, or gain or benefit of any kind or type, any or all of which are unrelated to the provision of physical therapy services, including engaging in inappropriate sexual or inappropriately intimate conduct, which shall include, but not be limited to:

a. engaging in or soliciting a sexual or inappropriately intimate relationship, whether consensual or non-consensual, while a physical therapist or physical therapist assistant/patient or client relationship exists;

b. making sexual or inappropriately intimate advances, requesting or offering sexual favors or engaging in any other verbal conduct or physical contact of a sexual or inappropriately intimate nature with patients or clients; or

c. intentionally viewing a completely or partially disrobed patient in the course of treatment if such viewing is not reasonably related to patient diagnosis or treatment under current practice standards;

E.7 - F.1 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3) and Act 31 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:

Family Impact Statement

In accordance with the requirements of R.S. 49:972, the Board of Physical Therapy Examiners issues the following Family Impact Statement regarding the above proposed Rule.

1. There is no effect on the stability of the family.

2. There is no effect on the authority and rights of parents regarding the education and supervision of their children.

3. There is no effect on the functioning of the family.

4. There is no effect on family earnings and family budget.

5. There is no effect on the behavior and personal responsibility of children.

6. There is no effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Written comments concerning the proposed Rules may be directed to this address and to the attention of Cheryl Gaudin, Executive Director. Such comments should be submitted no later than the close of business at 4:30 p.m. on Thursday, July 10, 2008.

Cheryl Gaudin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Licensure, Certification, and Practice

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

The Board will incur an implementation cost for publication and mailing the revised Practice Act, Rules and Regulations booklet. The cost involves reprinting of the booklet to incorporate the new amendments which are being promulgated. The new booklets, as amended, will be provided to the Board's licensees and other interested parties. It is anticipated that $6,730 in printing costs, $3,950 in mailing costs, and $3,500 in personal and professional services will be incurred with the publishing of the proposed rules FY 08. 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 not anticipated that the proposed rule amendment will have any effect on the board's revenue collection.

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

It is anticipated the proposed rule revisions will clarify the application of the PT Practice Act. The intent of the amendment is to clarify and enhance rules applicable to the supervision of PTA's and other support personnel and to provide effective documentation of such supervision. Additionally, the proposed rules will reduce the potential for noncompliance with the Practice Act, thusly decreasing any potential expenses for disciplinary actions or loss of income as

a result of disciplinary actions. Licensees and employer may incur a small indeterminable increase in costs for documenting supervision conferences in patient records as a result of the proposed rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition and employment is anticipated.

Cheryl Gaudin	Robert E. Hosse
Executive Director	Staff Director
0806#008	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Practical Nurse Examiners

Adjudication and Records Protection
(LAC 46:XLVII.306 and 917)

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 change to Section 306 is to add language which prohibits respondents and/or their attorneys from contacting board witnesses in order to protect board witnesses from harassment, threats, and/or other forms of intimidation which may be employed in an attempt to influence testimony and/or to prevent board witnesses from testifying at a hearing; to include denial in the listing of disciplinary actions that the board may impose as provided under R.S. 37:961 et seq.; and to define denial.

The purpose of the proposed change to Section 917 is to delineate the records that schools must protect and retain for 60 years and to provide for all other records to be maintained and protected according to a record retention schedule submitted to the board for approval.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLVII. Nurses
Subpart 1. Practical Nurses
Chapter 3. Board of Practical Nurse Examiners
§306. Adjudication Proceedings

A. - M.3. ...

4. Prior to a formal hearing the respondent, his/her attorney, or any party representing his/her interest is prohibited from having any contact whatsoever with any witness who will or may be called to give testimony in a formal hearing.

5. Depositions for the purposed of discovery are permitted and may also be allowed for the perpetuation of a witness' testimony upon good showing to the board that a witness will be unavailable to appear in person at a formal hearing. All costs of a deposition are borne by the requesting party.

6. Motions may be made before, during, and/or after a formal hearing. All motions made before or after a formal hearing shall be made in writing and in a timely manner in accordance with the nature of the request.

N. - Q. …

R. Disciplinary action(s) imposed by the board may include reprimand, probation, suspension, revocation, denial, as well as penalties provided under R.S. 37:961 et seq., as amended and/or these rules and regulations of the Louisiana State Board of Practical Nurse Examiners and/or any combination thereof.

1. - 4. …

5. Denial. An applicant may be denied licensure in the state of Louisiana. An applicant who has been denied licensure shall never be allowed to practice practical nursing in the state of Louisiana.

S. - U. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:978 and Acts 675 and 827, 1993.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, LR 2:275 (September 1976), amended LR 3:193 (April 1977), LR 10:336 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1126 (October 1992), repromulgated LR 18:1259 (November 1992), amended LR 20:663 (June 1994), LR 26:2614 (November 2000), LR 28:2353 (November 2002), LR 30:1478 (July 2004), LR 34:

Chapter 9. Program Projection
Subchapter C. Records
§917. Protection

A. Administration shall provide for the protection of all student records and transcripts, faculty personnel records, contractual agreements, communications and other pertinent program information against loss, destruction and unauthorized use.

B. The following records shall be maintained and protected for a period of not less than 60 years in fireproof and waterproof storage:

1. a copy of the curriculum used for each class of students;
2. a list of the textbooks and references used for each class of students;
3. a list of the faculty employed to instruct each class of students;
4. the master rotation schedule for each class of students;
5. a copy of the student evaluation form for admittance into an approved PN program;
6. student transcripts;
7. licensure examination results for each graduate;
8. materials of historical interest.

C. All other records, contractual agreements, communications, and information shall be maintained and protected according to a record retention schedule which schedule shall be submitted to the board for approval.

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 10:338 (April 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 34:

Family Impact Statement

The proposed amendments to LAC 46: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, 2008, to Claire Doody Glaviano, Board of Practical Nurse Examiners, 3421 N. Causeway, Ste. 505, Metairie, LA 70002.

Claire Doody Glaviano, MN, APRN
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Adjudication and Records Protection

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

Other than the rule publication costs, which are estimated to be $00 in fiscal year 2008, it is not anticipated that the proposed rule amendments whill restult in any material costs or savings to the Board of Practical Nurse Examiners, any state unit or local government unit.

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

The proposed rule will have no financial effect upon 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.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Claire Doody Glaviano, MN, APRN
Executive Director
0806#002

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Office of Aging and Adult Services

Home and Community Based Services Waivers
Adult Day Health Care
(LAC 50:XXI.Chapters 21-39)

The Department of Health and Hospitals, Office of Aging and Adult Services proposes to amend LAC 50:XXI.Chapters 21-39 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the provisions governing home and community-based waiver services for adult day health care *(Louisiana Register,* Volume 30, Number 9). The department of Health and Hospitals, Office of Aging and Adult Services subsequently amended the September 20, 2004 Rule to: 1) clarify procedures for the allocation of ADHC waiver opportunities; 2) amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and 3) eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L) *(Louisiana Register,* Volume 32, Number 12). The department promulgated an Emergency Rule to amend the December 20, 2006 Rule to: 1) redefine the target population; 2) establish provisions governing placement on the request for services registry; 3) clarify the comprehensive plan of care requirements; and 4) establish provider reporting requirements and admission and discharge criteria for the ADHC Waiver *(Louisiana Register,* Volume 33, Number 3). The department amended the provisions contained in the March 20, 2007 Emergency Rule to more precisely define the target population, establish explicit provisions governing placement on the request for services registry and admission and discharge criteria for the ADHC Waiver (*Louisiana Register,* Volume 33, Number 5). The May 20, 2007 Emergency Rule was amended to further clarify the provisions governing the ADHC Waiver program *(Louisiana Register,* Volume 33, Number 8). In January 2008, the Office of Aging and Adult Services promulgated a Notice of Intent proposing to amend the December 20, 2006 Rule to: 1) incorporate the provisions of the August 20, 2007 Emergency Rule; 2) remove the provisions governing the licensing standards for ADHC facilities which will be repromulgated in Title 48 of the Louisiana Administrative Code; 3) establish support coordination as a separate service covered in the ADHC Waiver; and 4) reduce the current ADHC rate paid to providers as a result of adding support coordination as a separate service since these services are currently reimbursed as part of the ADHC center rate *(Louisiana Register,* Volume 34, Number 1). As a result of public hearing comments received, the Office of Aging and Adult Services now proposes to republish the provisions governing the ADHC Waiver to provide further clarification of the provisions included in the January 20, 2008 Notice of Intent.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 3. Adult Day Health Care
Chapter 21. General Provisions
§2101. Introduction

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waived service under the provisions of Title XIX of the Social Security Act and is administrated by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

C. Any provider of services under the ADHC Waiver shall abide by and adhere to any federal or state laws, rules

or any policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2103. Program Description

A. An adult day health care waiver program expands the array of services available to individuals with functional impairments, and helps to bridge the gap between independence and institutional care by allowing them to remain in their own homes and communities. This program provides direct care for five or more continuous hours in a 24-hour weekday to individuals who have physical, mental or functional impairments.

B. The target population for the ADHC Waiver Program includes individuals who:

1. are 65 years old or older; or

2. 22 to 64 years old and with a disability according to Medicaid standards or the Social Security Administration's disability criteria; and

3. meet nursing facility level of care requirements.

C. The long-range goal for all adult day health care participants is the delay or prevention of long-term care facility placement. The more immediate goals of the adult day health care waiver are to:

1. promote the individual's maximum level of independence;

a. - f. Repealed.

2. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;

3. restore and rehabilitate the individual to the highest possible level of functioning;

4. provide support and education for families and other caregivers;

5. foster socialization and peer interaction; and

6. serve as an integral part of the community services network and the long-term care continuum of services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2105. Definitions

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2256 (December 2006), repealed LR 34:

§2105. Request for Services Registry

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as "the registry", for the Adult day health care waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the ADHC Waiver registry shall be screened by the department, or its designee, to determine whether they meet nursing facility level of care. Only individuals who meet this criterion will be added to the registry.

C. - D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 34:

§2107. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult day health care waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those individuals who have indicated that they are at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

a. is likely to require admission to a nursing facility within the next 120 days;

b. faces a substantial posibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or

c. has a primary caregiver who has a disability or is age 70 or older.

C. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

D. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 23. Services

§2301. Covered Services

A. The following services are available to recipients in the ADHC Waiver. All services must be provided in accordance with the approved comprehensive plan of care (CPOC). No services shall be provided until the CPOC has been approved.

1. Adult Day Health Care. ADHC services are a planned, diverse daily program of individual services and group activities structured to enhance the recipient's physical

functioning and to provide mental stimulation. Services are furnished for five or more continuous hours per day (exclusive of transportation time to and from the ADHC center) on a regularly scheduled basis for one or more days per week, or as specified in the individualized service plan. An adult day health care center shall, at a minimum, furnish the following services:

a. individualized training or assistance with the activities of daily living (toileting, grooming, eating, ambulation, etc.);

b. health and nutrition counseling;

c. an individualized, daily exercise program;

d. an individualized, goal directed recreation program;

e. daily health education;

f. medical care management;

g. one nutritionally-balanced hot meal and two snacks served each day;

h. nursing services that include the following individualized health services;

i. monitoring vital signs appropriate to the diagnosis and medication regimen of each recipient no less frequently than monthly;

ii. administering medications and treatments in accordance with physicians' orders;

iii. monitoring self-administration of medications while the recipient is at the ADHC center;

NOTE: All nursing services shall be provided in accordance with acceptable professional practice standards.

i. transportation to and from the center at the beginning and end of the program day; and

j. transportation to and from medical and social activities when the participant is accompanied by center staff;

NOTE: If transportation services that are prescribed in any individual's approved ISP are not provided by the ADHC center, the center's reimbursement rate shall be reduced accordingly.

2. Support Coordination. These services assist participants in gaining access to necessary waiver and other State Plan services, as well as medical, social, educational and other services, regardless of the funding source for these services. This is a mandatory service.

3. Transition Intensive Support Coordination. These services will assist participants currently residing in nursing facilities who want to transition into the community. These services assist participants in gaining access to needed medical, social, educational and other services, regardless of the funding source for these services.

4. Transition Service. These services that will assist an individual transition from a nursing facility to a living arrangement in a private residence where the individual is directly responsible for his/her own living expenses.

5. Other Services. ADHC providers may provide other services and activities as identified in the current ADHC provider manual that enhance the participant's independence and community involvement.

B. An individual must require and maintain the need for two waiver services.

C. - I.5. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2303. Individualized Service Plan

A. All ADHC services shall:

1. be provided according to the individualized service plan;

2. be a result of an interdisciplinary staffing in which the participant and direct care staff participate;

3. be written in terminology which all center personnel can understand;

4. list the identified problems and needs of the participant for which intervention is indicated as identified in assessments, progress notes and medical reports;

5. propose a reasonable, measurable short-term goal for each problem/need;

6. contain the necessary elements of the center's self administration of medication plan, if applicable;

7. use the strengths of the participant in developing approaches to problems;

8. specify the approaches to be used for each problem and that each approach is appropriate to effect positive change for that problem;

9. identify the staff member responsible for carrying out each approach;

10. project the resolution date or review date for each problem;

11. specify the frequency of each approach/service;

12. contain a sufficient explanation of why the participant would require 24-hour care were he/she not receiving ADHC services;

a. – b. Repealed.

13. include the number of days and time of scheduled attendance each week;

14. include discharge as a goal; and

15. be kept in the participant's record used by direct care staff.

A.16 - D.12. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2305. Medical Certification Application Process

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2038 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2257 (December 2006), LR 34:

§2307. Interdisciplinary Team

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2039 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2309. Interdisciplinary Team Assessments

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2039 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2257 (December 2006), repealed LR 34:

§2311. Staffings

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2313. Plan of Care

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2315. Progress Notes

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 25. Admission and Discharge Criteria

§2501. Admission Criteria

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;

2. initial and continued eligibility for a nursing facility level of care;

3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual; and

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §2501.A. above will result in denial of admission to the ADHC Waiver.

C. - D.13. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), amended by the Department Of Hospitals, Office of Aging and Adult Services, LR 34:

§2503. Denial or Discharge Criteria

A. Admission shall be denied or the recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined:

1. The individual does not meet the criteria for Medicaid financial eligibility.

2. The individual does not meet the criteria for a nursing facility level of care.

3. The recipient resides in another state or has a change of residence to another state.

4. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver services (exclusive of support coordination services) for a period of 30 consecutive days.

5. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.

6. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

7. It is not cost effective to serve the individual in the ADHC Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 27. Provider Participation

§2701. General Provisions

A. Each adult day health care center shall enter into a provider agreement with the department to provide services which may be reimbursed by the Medicaid Program, and shall agree to comply with the provisions of this Rule.

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving services in accordance with the ADHC Waiver program provisions.

C. ADHC providers shall ensure that all non-licensed direct care staff meet the minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179-2179.1 and be registered on the Louisiana Direct Service Worker Registry.

D. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office for Aging and Adult Services, LR 34:

§2703. Reporting Requirements

A. Support coordinators and direct service providers, including ADHC providers, are obligated to report changes to the department that could affect the waiver recipient's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers, including ADHC providers, are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the department with the specified requirements.

C. Support coordinators shall provide the participant's approved comprehensive plan of care to the ADHC provider in a timely manner.

D. ADHC providers shall provide the participant's approved individualized service plan to the support coordinator in a timely manner.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 29. Reimbursement

§2901. General Provisions

A. Development. Adult Day Health Care providers shall be reimbursed a per diem rate for services provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all adult day health care waiver recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

B. Reimbursement shall not be made for ADHC Waiver services provided prior to the department's approval of the CPOC.

C. - E.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2257 (December 2006), LR 34:

§2903. Cost Reporting

A. Cost Centers Components

1. Direct Care Costs. This component reimburses for in-house and contractual direct care staffing and fringe benefits and direct care supplies.

2. Care Related Costs. This component reimburses for in-house and contractual salaries and fringe benefits for activity and social services staff, raw food costs and care related supplies for activities and social services.

3. Administrative and Operating Costs. This component reimburses for in-house or contractual salaries and related benefits for administrative, dietary, housekeeping and maintenance staff. Also included are:

a. utilities;
b. accounting;
c. dietary;
d. housekeeping and maintenance supplies; and
e. all other administrative and operating type expenditures.

4. Property. This component reimburses for depreciation, interest on capital assets, lease expenses, property taxes and other expenses related to capital assets.

B. Providers of ADHC services are required to file acceptable annual cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this §3103 and for which the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the center for no less than five years following the date reports are submitted to the Bureau. A chart of accounts and an accounting system on the accrual basis or converted to the accrual basis at year end are required in the cost report preparation process. The Bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

C. The cost reporting forms and instructions developed by the bureau must be used by all ADHC facilities participating in the Louisiana Medicaid Program. Hospital based and other provider based ADHC which use Medicare forms for step down in completing their ADHC Medicaid cost reports must submit copies of the applicable Medicare cost report forms also. All amounts must be rounded to the nearest dollar and must foot and cross foot. Only per diem cost amounts will not be rounded. Cost reports submitted that have not been rounded in accordance with this policy will be returned and will not be considered as received until they are resubmitted.

D. Annual Reporting. Cost reports are to be filed on or before the last day of September following the close of the reporting period. Should the due date fall on a Saturday, Sunday, or an official state or federal holiday, the due date shall be the following business day. The cost report forms and schedules must be filed in duplicate together with two copies of the following documents:

1. a working trial balance that includes the appropriate cost report line numbers to which each account can be traced. This may be done by writing the cost report category and line numbers by each ending balance or by running a trial balance in cost report category and line number order that totals the account;

2. a depreciation schedule. The depreciation schedule which reconciles to the depreciation expense reported on the cost report must be submitted. If the center files a home office cost report, copies of the home office depreciation schedules must also be submitted with the home office cost report. All hospital based facilities must submit two copies of a depreciation schedule that clearly shows and totals assets that are hospital only, ADHC only and shared assets;

3. an amortization schedule(s), if applicable;

4. a schedule of adjustment and reclassification entries;

5. a narrative description of purchased management services and a copy of contracts for managed services, if applicable;

6. For management services provided by a related party or home office, a description of the basis used to allocate the costs to providers in the group and to non-provider activities and copies of the cost allocation worksheet, if applicable. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule; and

7. all allocation worksheets must be submitted by hospital-based facilities. The Medicare worksheets that must be attached by facilities using the Medicare forms for allocation are:

a. A;
b. A-6;
c. A-7 parts I, II and III;
d. A-8;
e. A-8-1;
f. B part 1; and
g. B-1.

E. Each copy of the cost report must have the original signatures of an officer or center administrator on the certification. The cost report and related documents must be submitted to the address indicated on the cost report

instruction form. In order to avoid a penalty for delinquency, cost reports must be postmarked on or before the due date.

F. When it is determined, upon initial review for completeness, that an incomplete or improperly completed cost report has been submitted, the provider will be notified. The provider will be allowed a specified amount of time to submit the requested information without incurring the penalty for a delinquent cost report. For cost reports that are submitted by the due date, 10 working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. For cost reports that are submitted after the due date, five working days from the date of the provider's receipt of the request for additional information will be allowed for the submission of the additional information. An exception exists in the event that the due date comes after the specified number of days for submission of the requested information. In these cases, the provider will be allowed to submit the additional requested information on or before the due date of the cost report. If requested additional information has not been submitted by the specified date, a second request for the information will be made. Requested information not received after the second request may not be subsequently submitted and shall not be considered for reimbursement purposes. An appeal of the disallowance of the costs associated with the requested information may not be made. Allowable costs will be adjusted to disallow any expenses for which requested information is not submitted.

G. Accounting Basis. The cost report must be prepared on the accrual basis of accounting. If a center is on a cash basis, it will be necessary to convert from a cash basis to an accrual basis for cost reporting purposes. Particular attention must be given to an accurate accrual of all costs at the year-end for the equitable distribution of costs to the applicable period. Care must be given to the proper allocation of costs for contracts to the period covered by such contracts. Amounts earned although not actually received and amounts owed to creditors but not paid must be included in the reporting period.

H. Supporting Information. Providers are required to maintain adequate financial records and statistical data for proper determination of reimbursable costs. Financial and statistical records must be maintained by the center for five years from the date the cost report is submitted to the Bureau. Cost information must be current, accurate and in sufficient detail to support amounts reported in the cost report. This includes all ledgers, journals, records, and original evidences of cost (canceled checks, purchase orders, invoices, vouchers, inventories, time cards, payrolls, bases for apportioning costs, etc.) that pertain to the reported costs. Census data reported on the cost report must be supportable by daily census records. Such information must be adequate and available for auditing.

I. Employee Record

1. The provider shall retain written verification of hours worked by individual employees.

a. Records may be sign-in sheets or time cards, but shall indicate the date and hours worked.

b. Records shall include all employees even on a contractual or consultant basis.

2. Verification of criminal background check.

3. Verification of employee orientation and in-service training.

4. Verification of the employee's communicable disease screening.

J. Billing Records

1. The provider shall maintain billing records in accordance with recognized fiscal and accounting procedures. Individual records shall be maintained for each client. These records shall meet the following criteria.

a. Records shall clearly detail each charge and each payment made on behalf of the client.

b. Records shall be current and shall clearly reveal to whom charges were made and for whom payments were received.

c. Records shall itemize each billing entry.

d. Records shall show the amount of each payment received and the date received.

2. The provider shall maintain supporting fiscal documents and other records necessary to ensure that claims are made in accordance with federal and state requirements.

K. Non-acceptable Descriptions. "Miscellaneous", "other" and "various", without further detailed explanation, are not acceptable descriptions for cost reporting purposes. If any of these are used as descriptions in the cost report, a request for information will not be made and the related line item expense will be automatically disallowed. The provider will not be allowed to submit the proper detail of the expense at a later date, and an appeal of the disallowance of the costs may not be made.

L. Exceptions. Limited exceptions to the cost report filing requirements will be considered on an individual provider basis upon written request from the provider to the Bureau of Health Services Financing, Rate and Audit Review Section. If an exception is allowed, the provider must attach a statement describing fully the nature of the exception for which prior written permission was requested and granted. Exceptions which may be allowed with written approval are as follows.

1. If the center has been purchased or established during the reporting period, a partial year cost report may be filed in lieu of the required 12-month report.

2. If the center experiences unavoidable difficulties in preparing the cost report by the prescribed due date, an extension may be requested prior to the due date. Requests for exception must contain a full statement of the cause of the difficulties that rendered timely preparation of the cost report impossible.

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 Aging and Adult Services, LR 34:

§2905. Cost Categories Included in the Cost Report

A. Direct Care (DC) Costs

1. Salaries, Aides-gross salaries of certified nurse aides and nurse aides in training.

2. Salaries, LPNs-gross salaries of nonsupervisory licensed practical nurses and graduate practical nurses.

3. Salaries, RNs-gross salaries of nonsupervisory registered nurses and graduate nurses (excluding director of nursing and resident assessment instrument coordinator).

4. Salaries, Social Services-gross salaries of nonsupervisory licensed social services personnel providing medically needed social services to attain or maintain the

highest practicable physical, mental, or psychosocial well being of the residents.

5. Salaries, Activities—gross salaries of nonsupervisory activities/recreational personnel providing an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interest and the physical, mental, and psychosocial well being of the residents.

6. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for direct care employees.

7. Group Insurance, DC—cost of employer's contribution to employee health, life, accident and disability insurance for direct care employees.

8. Pensions, DC—cost of employer's contribution to employee pensions for direct care employees.

9. Uniform Allowance, DC—employer's cost of uniform allowance and/or uniforms for direct care employees.

10. Worker's Comp, DC—cost of worker's compensation insurance for direct care employees.

11. Contract, Aides—cost of aides through contract that are not center employees.

12. Contract, LPNs—cost of LPNs and graduate practical nurses hired through contract that are not center employees.

13. Contract, RNs—cost of RNs and graduate nurses hired through contract that are not center employees.

14. Drugs, Over-the-Counter and Legend—cost of over-the-counter and legend drugs provided by the center to its residents. This is for drugs not covered by Medicaid.

15. Medical Supplies—cost of patient-specific items of medical supplies such as catheters, syringes and sterile dressings.

16. Medical Waste Disposal—cost of medical waste disposal including storage containers and disposal costs.

17. Other Supplies, DC—cost of items used in the direct care of residents which are not patient-specific such as recreational/activity supplies, prep supplies, alcohol pads, betadine solution in bulk, tongue depressors, cotton balls, thermometers, and blood pressure cuffs.

18. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as direct care costs when those costs include allocated overhead.

19. Total Direct Care Costs—sum of the above line items.

B. Care Related Costs

1. Salaries—gross salaries for care related supervisory staff including supervisors or directors over nursing, social service and activities/recreation.

2. Salaries, Dietary—gross salaries of kitchen personnel including dietary supervisors, cooks, helpers and dishwashers.

3. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for care related employees.

4. Group Insurance, CR—cost of employer's contribution to employee health, life, accident and disability insurance for care related employees.

5. Pensions, CR—cost of employer's contribution to employee pensions for care related employees.

6. Uniform Allowance, CR—employer's cost of uniform allowance and/or uniforms for care related employees.

7. Worker's Comp, CR—cost of worker's compensation insurance for care related employees.

8. Barber and Beauty Expense—the cost of barber and beauty services provided to patients for which no charges are made.

9. Consultant Fees, Activities—fees paid to activities personnel, not on the center's payroll, for providing advisory and educational services to the center.

10. Consultant Fees, Nursing—fees paid to nursing personnel, not on the center's payroll, for providing advisory and educational services to the center.

11. Consultant Fees, Pharmacy—fees paid to a registered pharmacist, not on the center's payroll, for providing advisory and educational services to the center.

12. Consultant Fees, Social Worker—fees paid to a social worker, not on the center's payroll, for providing advisory and educational services to the center.

13. Consultant Fees, Therapists—fees paid to a licensed therapist, not on the center's payroll, for providing advisory and educational services to the center.

14. Food, Raw—cost of food products used to provide meals and snacks to residents. Hospital based facilities must allocate food based on the number of meals served.

15. Food, Supplements—cost of food products given in addition to normal meals and snacks under a doctor's orders. Hospital based facilities must allocate food-supplements based on the number of meals served.

16. Supplies, CR—the costs of supplies used for rendering care related services to the patients of the center. All personal care related items such as shampoo and soap administered by all staff must be included on this line.

17. Allocated Costs, Hospital Based—the amount of costs that have been allocated through the step-down process from a hospital or state institution as care related costs when those costs include allocated overhead.

18. Total Care Related Costs—the sum of the care related cost line items.

19. Contract, Dietary—cost of dietary services and personnel hired through contract that are not employees of the center.

C. Administrative and Operating Costs (AOC)

1. Salaries, Administrator—gross salary of administrators excluding owners. Hospital based facilities must attach a schedule of the administrator's salary before allocation, the allocation method, and the amount allocated to the nursing center.

2. Salaries, Assistant Administrator—gross salary of assistant administrators excluding owners.

3. Salaries, Housekeeping—gross salaries of housekeeping personnel including housekeeping supervisors, maids and janitors.

4. Salaries, Laundry—gross salaries of laundry personnel.

5. Salaries, Maintenance—gross salaries of personnel involved in operating and maintaining the physical plant, including maintenance personnel or plant engineers.

6. Salaries, Drivers—gross salaries of personnel involved in transporting clients to and from the center.

7. Salaries, Other Administrative—gross salaries of other administrative personnel including bookkeepers, receptionists, administrative assistants and other office and clerical personnel.

8. Salaries, Owner or Owner/Administrator—gross salaries of all owners of the center that are paid through the center.

9. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for administrative and operating employees.

10. Group Insurance, AOC—cost of employer's contribution to employee health, life, accident and disability insurance for administrative and operating employees.

11. Pensions, AOC—cost of employer's contribution to employee pensions for administration and operating employees.

12. Uniform Allowance, AOC—employer's cost of uniform allowance and/or uniforms for administration and operating employees.

13. Worker's Compensation, AOC—cost of worker's compensation insurance for administration and operating employees.

14. Contract, Housekeeping—cost of housekeeping services and personnel hired through contract that are not employees of the center.

15. Contract, Laundry—cost of laundry services and personnel hired through contract that are not employees of the center.

16. Contract, Maintenance—cost of maintenance services and persons hired through contract that are not employees of the center.

17. Consultant Fees, Dietician—fees paid to consulting registered dieticians.

18. Accounting Fees—fees incurred for the preparation of the cost report, audits of financial records, bookkeeping, tax return preparation of the adult day health care center and other related services excluding personal tax planning and personal tax return preparation.

19. Amortization Expense, Non-Capital—costs incurred for legal and other expenses when organizing a corporation must be amortized over a period of 60 months. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

20. Bank Service Charges—fees paid to banks for service charges, excluding penalties and insufficient funds charges.

21. Dietary Supplies—costs of consumable items such as soap, detergent, napkins, paper cups, straws, etc., used in the dietary department.

22. Dues—dues to one organization are allowable.

23. Educational Seminars and Training—the registration cost for attending educational seminars and training by employees of the center and costs incurred in the provision of in-house training for center staff, excluding owners or administrative personnel.

24. Housekeeping Supplies—cost of consumable housekeeping items including waxes, cleaners, soap, brooms and lavatory supplies.

25. Insurance, Professional Liability and Other—includes the costs of insuring the center against injury and malpractice claims.

26. Interest Expense, Non-Capital and Vehicles—interest paid on short term borrowing for center operations.

27. Laundry Supplies—cost of consumable goods used in the laundry including soap, detergent, starch and bleach.

28. Legal Fees—only actual and reasonable attorney fees incurred for non-litigation legal services related to patient care are allowed.

29. Linen Supplies—cost of sheets, blankets, pillows, gowns, under-pads and diapers (reusable and disposable).

30. Miscellaneous—costs incurred in providing center services that cannot be assigned to any other line item on the cost report. Examples of miscellaneous expense are small equipment purchases, all employees' physicals and shots, nominal gifts to all employees, such as a turkey or ham at Christmas, allowable advertising, and flowers purchased for the enjoyment of the clients. Items reported on this line must be specifically identified.

31. Management Fees and Home Office Costs—the cost of purchased management services or home office costs incurred that are allocable to the provider. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule.

32. Nonemergency Medical Transportation—the cost of purchased nonemergency medical transportation services including, but not limited to, payments to employees for use of personal vehicle, ambulance companies and other transportation companies for transporting patients of the center.

33. Office Supplies and Subscriptions—cost of consumable goods used in the business office such as:

a. pencils, paper and computer supplies;

b. cost of printing forms and stationery including, but not limited to, nursing and medical forms, accounting and census forms, charge tickets, center letterhead and billing forms;

c. cost of subscribing to newspapers, magazines and periodicals.

34. Postage—cost of postage, including stamps, metered postage, freight charges and courier services.

35. Repairs and Maintenance—supplies and services, including electricians, plumbers, extended service agreements, etc., used to repair and maintain the center building, furniture and equipment except vehicles. This includes computer software maintenance.

36. Taxes and Licenses—the cost of taxes and licenses paid that are not included on any other line on Form 6. This includes tags for vehicles, licenses for center staff (including nurse aide re-certifications) and buildings.

37. Telephone and Communications—cost of telephone services, wats lines and fax services.

38. Travel—cost of travel (airfare, lodging, meals, etc.) by the administrator and other authorized personnel to attend professional and continuing educational seminars and

meetings or to conduct center business. Commuting expenses and travel allowances are not allowable.

39. Vehicle Expenses—vehicle maintenance and supplies, including gas and oil.

40. Utilities—cost of water, sewer, gas, electric, cable TV and garbage collection services.

41. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital as administrative and operating costs.

42. Total Administrative and Operating Costs

D. Property and Equipment

1. Amortization Expense, Capital—legal and other costs incurred when financing the center must be amortized over the life of the mortgage. Amortization of goodwill is not an allowable cost. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

2. Depreciation—depreciation on the center's buildings, furniture, equipment, leasehold improvements and land improvements.

3. Interest Expense, Capital—interest paid or accrued on notes, mortgages, and other loans, the proceeds of which were used to purchase the center's land, buildings and/or furniture, equipment and vehicles.

4. Property Insurance—cost of fire and casualty insurance on center buildings, equipment and vehicles. Hospital-based facilities and state-owned facilities must allocate property insurance based on the number of square feet.

5. Property Taxes—taxes levied on the center's buildings, equipment and vehicles. Hospital-based facilities and state-owned facilities must allocate property insurance based on the number of square feet.

6. Rent, Building—cost of leasing the center's real property.

7. Rent, Furniture and Equipment—cost of leasing the center's furniture and equipment, excluding vehicles.

8. Lease, Automotive—cost of leases for vehicles used for patient care. A mileage log must be maintained. If a leased vehicle is used for both patient care and personal purposes, cost must be allocated based on the mileage log.

9. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital or state institution as property costs when those costs include allocated overhead.

10. Total Property and Equipment.

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 Aging and Adult Services, LR 34:

§2907. Allowable Costs

A. Allowable costs include those costs incurred by providers to conform to state licensure and federal certification standards. General cost principles are applied during the desk review and audit process to determine allowable costs.

1. These general cost principles include determining whether the cost is:

a. ordinary, necessary, and related to the delivery of care;

b. what a prudent and cost conscious business person would pay for the specific goods or services in the open market or in an arm's length transaction; and

c. for goods or services actually provided to the center.

B. Through the desk review and/or audit process, adjustments and/or disallowances may be made to a provider's reported costs. The Medicare Provider Reimbursement Manual is the final authority for allowable costs unless the department has set a more restrictive policy.

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 Aging and Adult Services, LR 34:

§2909. Nonallowable Costs

A. Costs that are not based on the reasonable cost of services covered under Medicare and are not related to the care of recipients are considered nonallowable costs.

B. Reasonable cost does not include the following:

1. costs not related to client care;

2. costs specifically not reimbursed under the program;

3. costs that flow from the provision of luxury items or services (items or services substantially in excess or more expensive than those generally considered necessary for the provision of the care);

4. costs that are found to be substantially out of line with other centers that are similar in size, scope of services and other relevant factors;

5. costs exceeding what a prudent and cost-conscious buyer would incur to purchase the goods or services.

C. General nonallowable costs:

1. services for which Medicaid recipients are charged a fee;

2. depreciation of non-client care assets;

3. services that are reimbursable by other state or federally funded programs;

4. goods or services unrelated to client care;

5. unreasonable costs.

D. Specific nonallowable costs (this is not an all inclusive listing):

1. advertising—costs of advertising to the general public that seeks to increase patient utilization of the ADHC center;

2. bad debts—accounts receivable that are written off as not collectible;

3. contributions—amounts donated to charitable or other organizations;

4. courtesy allowances;

5. director's fees;

6. educational costs for clients;

7. gifts;

8. goodwill or interest (debt service) on goodwill;

9. costs of income producing items such as fund raising costs, promotional advertising, or public relations costs and other income producing items;

10. income taxes, state and federal taxes on net income levied or expected to be levied by the federal or state government;

11. insurance, officers—cost of insurance on officers and key employees of the center when the insurance is not provided to all employees;

12. judgments or settlements of any kind;

13. lobbying costs or political contributions, either directly or through a trade organization;

14. non-client entertainment;

15. non-Medicaid related care costs—costs allocated to portions of a center that are not licensed as the reporting ADHC or are not certified to participate in Title XIX;

16. officers' life insurance with the center or owner as beneficiary;

17. payments to the parent organization or other related party;

18. penalties and sanctions—penalties and sanctions assessed by the Centers for Medicare and Medicaid Services, the Internal Revenue Service or the State Tax Commission; insufficient funds charges;

19. personal comfort items; and

20. personal use of vehicles.

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 Aging and Adult Services, LR 34:

§2911. Audits

A. Each provider shall file an annual center cost report and, if applicable, a central office cost report.

B. The provider shall be subject to financial and compliance audits.

C. All providers who elect to participate in the Medicaid Program shall be subject to audit by state or federal regulators or their designees. Audit selection shall be at the discretion of the department.

1. The Department conducts desk reviews of all of the cost reports received and also conducts on-site audits of provider cost reports.

2. The records necessary to verify information submitted to the department on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to the department's audit staff.

D. In addition to the adjustments made during desk reviews and on-site audits, the department may exclude or adjust certain expenses in the cost report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

E. The center shall retain such records or files as required by the department and shall have them available for inspection for five years from the date of service or until all audit exceptions are resolved, whichever period is longer.

F. If a center's audit results in repeat findings and adjustments, the department may:

1. withhold vendor payments until the center submits documentation that the non-compliance has been resolved;

2. exclude the provider's cost from the database used for rate setting purposes; and

3. impose civil monetary penalties until the center submits documentation that the non-compliance has been resolved.

G. If the department's auditors determine that a center's financial and/or census records are unauditable, the vendor payments may be withheld until the center submits auditable records. The provider shall be responsible for costs incurred by the department's auditors when additional services or procedures are performed to complete the audit.

H. Vendor payments may also be withheld under the following conditions:

1. a center fails to submit corrective action plans in response to financial and compliance audit findings within 15 days after receiving the notification letter from the department; or

2. a center fails to respond satisfactorily to the department's request for information within 15 days after receiving the department's notification letter.

I. The provider shall cooperate with the audit process by:

1. promptly providing all documents needed for review;

2. providing adequate space for uninterrupted review of records;

3. making persons responsible for center records and cost report preparation available during the audit;

4. arranging for all pertinent personnel to attend the closing conference;

5. insuring that complete information is maintained in client's records;

6. developing a plan of correction for areas of noncompliance with state and federal regulations immediately after the exit conference time limit of 30 days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§2913. Exclusions from the Database

A. The following providers shall be excluded from the database used to calculate the rates:

1. providers with disclaimed audits; and

2. providers with cost reports for periods other than a 12-month period.

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 Aging and Adult Services, LR 34:

§2915. Provider Reimbursement

A. Cost Determination Definitions

Adjustment Factor—computed by dividing the value of the index for December of the year preceding the rate year by the value of the index one year earlier (December of the second preceding year).

Base Rate—calculated in accordance with §2915.B.5, plus any base rate adjustments granted in accordance with §2915.B.7 which are in effect at the time of calculation of new rates or adjustments.

Base Rate Components—the base rate is the summation of the following:

a. direct care;

b. care related costs;

c. administrative and operating costs; and

d. property costs.

Indices—

a. CPI, All Items—the Consumer Price Index for All Urban Consumers-South Region (All Items line) as published by the United States Department of Labor.

b. CPI, Medical Services—the Consumer Price Index for All Urban Consumers-South Region (Medical

Services line) as published by the United States Department of Labor.

B. Rate Determination

1. The base rate is calculated based on the most recent audited or desk reviewed cost for all ADHC providers filing acceptable full year cost reports.

2. Audited and desk reviewed costs for each component are ranked by center to determine the value of each component at the median.

3. The median costs for each component are multiplied in accordance with §2915.B.4 then by the appropriate economic adjustment factors for each successive year to determine base rate components. For subsequent years, the components thus computed become the base rate components to be multiplied by the appropriate economic adjustment factors, unless they are adjusted as provided in §2915.B.7 below. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply only when the state legislature allocates funds for this purpose. The inflationary adjustment shall be made prorating allocated funds based on the weight of the rate components.

4. The inflated median shall be increased to establish the base rate median component as follows.

a. The inflated direct care median shall be multiplied times 115 percent to establish the direct care base rate component.

b. The inflated care related median shall be multiplied times 105 percent to establish the care related base rate component.

c. The administrative and operating median shall be multiplied times 105 percent to establish the administrative and operating base rate component.

5. At least every three years, audited and desk reviewed cost report items will be compared to the rate components calculated for the cost report year to insure that the rates remain reasonably related to costs.

6. Formulae. Each median cost component shall be calculated as follows.

a. Direct Care Cost Component. Direct care per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for Medical Services. The direct care rate component shall be set at 115 percent of the inflated median.

i. For dates of service on or after February 9, 2007, and extending until the ADHC rate is rebased using a cost report that begins after 7/1/2007, the center-specific direct care rate will be increased by $1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

b. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

c. Administrative and Operating Cost Component. Administrative and operating per diem cost from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI-All Items index for December of the year proceeding the base rate year by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

d. Property Cost Component. The property per diem costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

7. Interim Adjustments to Rates. If an unanticipated change in conditions occurs that affects the cost of at least 50 percent of the enrolled ADHC providers by an average of five percent or more, the rate may be changed. The Department will determine whether or not the rates should be changed when requested to do so by 25 percent or more of the enrolled providers, or an organization representing at least 25 percent of the enrolled providers. The burden of proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. The Department may initiate a rate change without a request to do so. Changes to the rates may be temporary adjustments or base rate adjustments as described below.

a. Temporary Adjustments. Temporary adjustments do not affect the base rate used to calculate new rates.

i. Changes Reflected in the Economic Indices. Temporary adjustments may be made when changes which will eventually be reflected in the economic indices, such as a change in the minimum wage, a change in FICA or a utility rate change, occur after the end of the period covered by the indices, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

ii. Lump Sum Adjustments. Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay, such as a change in certification standards mandating additional equipment or furnishings. Such adjustments shall be subject to the Bureau's review and approval of costs prior to reimbursement.

b. Base Rate Adjustment. A base rate adjustment will result in a new base rate component value that will be used to calculate the new rate for the next fiscal year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

8. Provider Specific Adjustment. When services required by these provisions are not made available to the recipient by the provider, the department may adjust the prospective payment rate of that specific provider by an amount that is proportional to the cost of providing the

service. This adjustment to the rate will be retroactive to the date that is determined by the department that the provider last provided the service and shall remain in effect until the department validates, and accepts in writing, an affidavit that the provider is then providing the service and will continue to provide that service.

C. Cost Settlement. The direct care cost component shall be subject to cost settlement. The direct care floor shall be equal to 90 percent of the median direct care rate component trended forward for direct care services (plus 90 percent of any direct care incentive added to the rate). The Medicaid Program will recover the difference between the direct care floor and the actual direct care amount expended. If a provider receives an audit disclaimer, the cost settlement for that year will be based on the difference between the direct care floor and the lowest direct care per diem of all facilities in the most recent audited and/or desk reviewed database trended forward to the rate period related to the disclaimer.

D. Support Coordination Services Reimbursement. Support coordination services previously provided by ADHC providers and included in the rate, including the Minimum Data Set Home Care (MDS/HC), the social assessment, the nursing assessment, the CPOC and home visits will no longer be the responsibility of the ADHC provider. Support coordination services shall be provided as a separate service covered in the ADHC Waiver. As a result of the change in responsibilities, the rate paid to ADHC providers shall be adjusted accordingly.

1. Effective January 1, 2009, the rate paid to ADHC providers on December 31, 2008 shall be reduced by $4.67 per day which is the cost of providing support coordination services separately.

2. This rate reduction will extend until such time that the ADHC provider's rate is rebased using cost reports that do not reflect the cost of delivering support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 31. Reimbursement

Subchapter A. Prospective Payment System

§3101. General Provisions

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2042 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§3103. Cost Reporting

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2043 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§3105. Cost Categories Included in Cost Report

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2045 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§3107. Nonallowable Costs

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2047 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§3109. Provider Reimbursement

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2048 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Subchapter B. Admission Assessment/Vendor Payment

§3121. BHSF Admission Assessment/Vendor Payment

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2049 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 33. Quality Assurance Monitoring

§3301. Utilization Review

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2050 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§3303. Inspection of Care

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2051 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§3305. Discharge Planning and Implementation

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2053 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 35. Appeals

§3501. General Procedures

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2055 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

§3503. Evidentiary Hearing

Repealed.

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

HISTORICAL NOTE: Promulgated by Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2056 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 37. Audits

§3701. Audits

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2057 (September 2004), repealed by the Department Of Health and Hospitals, Office of Aging and Adult Services, LR 34:

Chapter 39. Sanctions

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2058 (September 2004), repealed by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:

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 a positive effect on family functioning, stability, or autonomy as described in R.S. 49:972 as it will allow more flexibility and utilization of services for recipients in the ADHC Waiver.

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 Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, July 29, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested individuals 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community Based Services Waivers—Adult Day Health Care

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 07-08. The ADHC rate currently paid to providers includes support coordination type services. The ADHC facility rate will be reduced to offset the cost of establishing support coordination as a separate service in the ADHC Waiver program. It is anticipated that $5,100 ($2,550 SGF and $2,550 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 07-08. It is anticipated that $2,550 will be collected in FY 07-08 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend the provisions governing the ADHC Waiver to: 1) incorporate the provisions of the August 20, 2007 Emergency Rule; 2) remove the provisions governing the licensing standards for ADHC facilities which will be repromulgated in Title 48 of the Louisiana Administrative Code; 3) establish support coordination as a separate service covered in the ADHC Waiver; and 4) reduce the current ADHC rate paid to providers as a result of adding support coordination as a separate service since these services are currently reimbursed as part of the ADHC facility rate. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 07-08, FY 08-09, and FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips	Robert E. Hosse
Medicaid Director	Staff Director
0806#072	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Office of Public Health

Marine and Freshwater Animal Food Products
(LAC 51:IX. 101, 145, 321, 327, 329, 331 and 333)

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the state health officer acting through the Department of Health and Hospitals, Office of Public Health, pursuant to the

authority in R.S. 40:4(A)(6) and R.S. 40:5, intends to amend and revise Title 51, Part IX (Marine and Fresh Water Animal Food Products), by effecting substantive changes as outlined below. The proposed change will result in code provisions which are consistent with the National Shellfish Sanitation Program (NSSP) 2005 Model Ordinance. The NSSP is the federal/state cooperative program recognized by the U.S. Food and Drug Administration (FDA) and the Interstate Shellfish Sanitation Conference (ISSC) for the sanitary control of shellfish produced and sold for human consumption.

Title 51
PUBLIC HEALTH—SANITARY CODE
Part IX. Marine and Fresh Water Animal Food Products

Chapter 1. Shellfish Growing Areas

§101. Definitions
[formerly paragraph 9:001]

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the Sanitary Code, and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows.

* * *

Certified Dealer—a person who has been registered with and certified by the Office of Public Health to be a dealer.

* * *

Dealer—a person engaged in the purchasing, storing, shipping, and selling of seafood.

* * *

Marine and Freshwater Animal Food Products—any food products used as food for human consumption which are made from or contains fish, shellfish, edible crustaceans, or any other animal whose normal life span, in whole or part, is spent in fresh, brackish or salt water.

* * *

Shellstock—live molluscan shellfish in the shell.

* * *

AUTHORITY NOTE: The first source of authority for promulgation of the sanitary code is in R.S. 36:258.B, with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with the specific provisions of R.S. 40:4.A(1), R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1289 (June 2002), amended LR 28:1591 (July 2002), LR 31:2895 (November 2005), LR 34:

§145. Permit Required for Transplanting
[formerly paragraph 9:004-2]

A. - A.5. …

6. Only two leases in the restricted area and approved bedding area, each pre-approved by the Department of Health and Hospitals, shall be utilized in the transplanting of shellfish.

a. Shellfish transplanted from a restricted area of a public oyster seed ground will be allowed at the discretion of the Louisiana Department of Wildlife and Fisheries (LDWF) only during the open oyster season. Shellstock from the public oyster seed ground will be allowed to be bedded on only two approved leases which will be pre-approved by the Department of Health and Hospitals. Transplanting from a public oyster seed ground area shall be for the purpose of moving the live oyster resource. The removal of excessive amounts of non-living reef material in transplant loads shall result in the forfeiture of transplant permit and/or the closure of the public oyster seed ground area to transplanting. Permit-holders shall allow on-board inspection and sampling of transplant loads by the LDWF.

7. - 12. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5 (2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1300 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:445 (March 2008), LR 34:

Chapter 3. Preparation and Handling of Seafood for Market

§321. Shipping Shell-Stock Requirements
[formerly paragraph 9:047]

A. - D. …

E. If shellstock is received either "sacked or in boxes" from a certified dealer and is not processed or repacked in any form, the product when reshipped to another certified dealer, wholesaler, or retailer, must have a label attached to the package, bearing the name and certification number of the original shipping firm.

F. Bulk labeling of shellstock in sacks will be accepted for sales between certified dealers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5(2)(3)(5)(7)(15), and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1307 (June 2002), amended by the Department of Health and Hospitals, Office of Public Health, Center for Environmental Health Services, LR 34:445 (March 2008), LR 34:

§327. Refrigeration of Shell-Stock Oysters, Clams and Mussels
[formerly paragraph 9:052]

A. - C. …

D. Once shellstock is off-loaded from a harvest vessel to an oyster cargo vessel, oysters must be placed under mechanical refrigeration at a time not to exceed the original harvesters Time-Temperature Matrix.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5.3., and the FDA/CFSAN & ISSC Model Ordinance IX, 2003.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 31:2896 (November 2005), LR 34:

§329. Refrigeration Requirements for Shell-Stock Harvested for Raw Consumption during the Months January through December
[formerly paragraph 9:052-1]

A. - A.4. …

5. Harvesting of oysters during the summer months will be based on the *Vibrio parahaemolyticus* control plan developed by the Office of Public Health Molluscan Shellfish Program. Irrespective of the requirements of Paragraphs 1-4 of this Subsection, any shell-stock harvested under this control plan shall be placed under mechanical refrigeration at an air temperature not to exceed 45°F within 5 hours from the time harvesting begins.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5.3, and the FDA/CFSAN & ISSC Model Ordinance VIII, 2003.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1308 (June 2002), amended LR 31:2896 (November 2005), LR 34:

§331. Refrigeration Requirements for Shell-Stock Harvested for Shucking by a Certified Dealer during the Months January through December [formerly paragraph 9:052-2]

A. - A.2 …

3. Dealer/harvester tags utilized for shellstock harvested outside of the time-temperature matrix will be labeled "for cooking or post-harvest processing only."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1), R.S. 40:5.3, and the FDA/CFSAN & ISSC Model Ordinance VIII, 2003.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1309 (June 2002), amended LR 31:2896 (November 2005), LR 34:

§333. General Provisions [formerly paragraph 9:052-3]

A. - F.5. …

G. Recalls

1. Certified dealers shall adopt written procedures for conducting recalls of adulterated or misbranded shellfish products. These written procedures for conducting recalls shall be based on, and complementary to, the FDA Enforcement Policy on Recalls published in the April 1, 2003 *Code of Federal Regulations*, Title 21, Chapter 1, Subchapter A, Part 7-Enforcement Policy which is also contained in the 2003 NSSP *Guide for the Control of Molluscan Shellfish* under Section VII (Federal Regulations) thereof.

2. Certified dealers shall follow their written recall procedures to include timely notification of the Office of Public Health of a situation requiring recall, timely notification of consignee who received the affected product, and effective removal or correction of the affected product.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4.A.(1) and R.S. 40:5.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1309 (June 2002), amended LR 28:1592 (July 2002), repromulgated LR 29:173 (February 2003), LR 34:

Family Impact Statement

1. The Effect on the Stability of the Family. There will be 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. There will be 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. There will be no effect on the functioning of the family.

4. The Effect on the Family Earnings and Family Budget. There will be no effect on family earnings or budget.

5. The Effect on the Behavior and Personal Responsibility of Children. There will be no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. There will be no effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

DHH-OPH will conduct a public hearing at 10 a.m. on Monday, July 28, 2008, in Room 371 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between N. Sixth and N. Fifth/North and Main Streets. (cater-corner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, or comments, orally or in writing.

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Tuesday, July 29, 2008 at COB, 4:30 p.m., and should be addressed to Mr. David Guilbeau, Administrator, Commercial Seafood Program, Office of Public Health, CEHS Mail Bin # 1, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7607. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 N. Fourth Street - Room 124, Baton Rouge, LA 70802.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Marine and Freshwater Animal Food Products

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

The proposed rule changes will amend the Louisiana Administrative Code Title 51, Part IX to be consistent with the National Shellfish Sanitation Program 2005 Model Ordinance. The first rule change would allow oyster transplanting from the State Public Seed Ground under special provisions from the Louisiana Department of Wildlife and Fisheries (LDWF). The second rule change would mandate that oyster re-shippers label their shell-stock with their certification number issued by the Office of Public Health. The third rule change would address refrigeration requirements for shell-stock harvesters off-loading oysters onto oyster cargo vessel. The fourth rule change addresses the time to refrigerate oysters during the summer months as prescribed in the Vibrio parahaemolyticus control plan developed by the Molluscan Shellfish Program. The fifth change would mandate that oysters harvested outside the time-temperature matrix be tagged "for cooking or post-harvest processing only". The sixth change would mandate that oyster shuckers, dealers, and re-shippers provide written recall procedures for conducting recalls of adulterated misbranded shellfish products.

The proposed rule changes will result in an estimated cost of $425 to the Department of Health and Hospitals to publish the notice of intent and the final rule in the Louisiana Register. This cost is routinely covered in the agency's budget.

LDWF has indicated that some additional costs are anticipated to enforce compliance with these regulations; however, the costs cannot be determined at this time. These costs will be determined based upon rules promulgated by LDWF to provide for the monitoring, enforcement, and violation of these proposed rule changes.

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

There are no effects on revenue collections of state or local governmental units anticipated as a result of this rule change.

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

This rule change will result in a cost to oyster harvesters who choose to add refrigeration on harvest vessels to comply with the mandate that oysters harvested for raw consumption must be refrigerated within five hours. The cost to add refrigeration on harvest vessels would be approximately $15,000. This rule will benefit harvesters who don't have refrigeration by allowing them to off-load the oysters onto cargo vessels that are equipped with refrigeration, which will assist them in being in compliance with these regulations. These harvesters will also save on fuel costs because they will be able to unload the oysters on the waters in lieu of having to return to the port to unload. This rule will also benefit the public because the refrigeration requirement will help to keep bacteria from rising in the oysters thus reducing illnesses associated with raw oysters.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment as a result of this rule change.

M. Rony Francis, MD, PhD
Assistant Secretary
0806#041

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Distinct Part Psychiatric Unit Expansions
(LAC 50:V.915)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:V.915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing Medicaid reimbursement of inpatient psychiatric services provided by distinct part psychiatric units in acute care general hospitals (*Louisiana Register*, volume 20, number 1).

Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program for non-state acute care hospitals that expand their distinct part psychiatric unit beds and enter into an agreement with the Office of Mental Health (OMH) to provide inpatient psychiatric services. In compliance with Act 18, the department promulgated an Emergency Rule to amend the January 20, 1994, Rule governing inpatient psychiatric services to allow acute care hospitals that enter into an agreement with OMH to expand their distinct part psychiatric unit beds and receive Medicaid reimbursement for the patients who occupy the additional beds (*Louisiana Register*, volume 34, number 1). This proposed Rule is being promulgated to continue the provisions of the January 1, 2008, Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by increasing access to critically needed inpatient psychiatric services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Medical Assistance Program–Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter A. General Provisions
§915. Distinct Part Psychiatric Units

A. Changes in the Size of Distinct Part Psychiatric Units. For the purposes of Medicaid reimbursement, the number of beds and square footage of each distinct part psychiatric unit will remain the same throughout the cost reporting period. Any changes in the number of beds or square footage considered to be a part of a distinct part psychiatric unit may be made only at the start of a cost reporting period. Verification of these changes will be completed during the Medicaid agency's on-site survey at least 60 days prior, but no more than 90 days prior, to the end of the hospital's current cost reporting period with other information necessary for determining recognition as a distinct part psychiatric unit.

1. Exception. Effective for dates of service on or after January 1, 2008, a Medicaid enrolled non-state acute care hospital that signs an addendum to the Provider Enrollment form (PE-50) by March 1, 2008, with the Department of Health and Hospitals, Office of Mental Health may make a one-time increase in its number of beds with a resulting increase in the square footage of its current distinct part psychiatric unit or a one-time opening of a new distinct part psychiatric unit.

a. This expansion or opening of a new unit will not be recognized, for Medicare purposes, until the beginning of the next cost reporting period. At the next cost reporting period, the hospital must meet the Medicare Prospective Payment System (PPS) exemption criteria and enroll as a Medicare PPS excluded distinct part psychiatric unit.

b. At the time of any expansion or opening of a new distinct part psychiatric unit, the provider must provide a written attestation that they meet all Medicare PPS rate exemption criteria.

B. Changes in the Status of Hospital Units. The status of each hospital unit is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Any changes in the status of a unit are made only at the start of a cost reporting period.

1. Exception. In accordance with §915.A.-1a., a facility may take advantage of a one-time increase in its number of beds. If a facility does utilize the one-time increase provisions, the changes shall be effective for the remainder of the cost reporting period in which the one-time increase provisions are utilized. Any further changes can only be made at the start of the next cost reporting period.

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 20:49 (January 1994), amended LR 34:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

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 Tuesday, July 29, 2008, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Distinct Part Psychiatric Unit Expansions

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 $846,770 for FY 07-08, $1,755,120 for FY 08-09 and $1,807,774 FY 09-10. Expenditures in the out years are subject to appropriation. It is anticipated that $340 ($170 SGF and $170 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $2,153,570 for FY 07-08, $4,424,880 for FY 08-09, and $4,557,626 for FY 09-10. It is anticipated that $170 will be expended in FY 07-08 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 January 1, 2008 emergency rule, adopts provisions to allow acute care hospitals that enter into an agreement with the Office of Mental Health to expand their distinct part psychiatric unit beds and receive Medicaid reimbursement for the patients that occupy the additional beds (approximately 19 additional beds). It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid Program for inpatient psychiatric services by approximately $3,000,000 for FY 07-08, $6,180,000 for FY 08-09, and $6,365,400 for FY 09-10. Expenditures in the out years are subject to appropriation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips
Medicaid Director
0806#073

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

Mental Health Rehabilitation Program
(LAC 50:XV.Chapters 1-7 and 11)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XV.Chapters 1-7 and 11 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the Mental Health Rehabilitation (MHR) Program to lift the moratorium on the enrollment of MHR providers in the Medicaid Program (*Louisiana Register*, volume 34, number 4). The department now proposes to amend the provisions governing the MHR Program to: 1) clarify staffing requirements, medical necessity criteria, provider participation requirements and provider responsibilities; and 2) remove the application fee requirement for prospective MHR providers.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by enhancing access to critically needed mental health services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 1. Mental Health Rehabilitation
Chapter 1. General Provisions
§103. Definitions and Acronyms

Approved Clinical Evaluator (ACE)—an LMPH who has received training required by the bureau and demonstrated competency in completing assessments and reassessments.

APRN - USPRA …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended LR 32:2065 (November 2006), LR 34:

Chapter 3. Covered Services and Staffing Requirements
Subchapter B. Mandatory Services
§311. Assessment

A. - C.3.d. …

NOTE: The provider must ensure and document that a recipient who chooses a non-MHR physician who is not a psychiatrist receives a face-to-face interview, review of Medical History Questionnaire section, review of the ISRP and review of the eCDI screen performed by a qualified psychiatrist.

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 31:1083 (May 2005), amended LR 32:2065 (November 2006), LR 34:

§323. Parent/Family Intervention (Counseling)

A. - B.2. …

C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:2066 (November 2006), amended LR 34:

Chapter 5. Medical Necessity Criteria

§501. General Provisions

A. - C. …

D. Initially all recipients must meet the medical necessity criteria for diagnosis, disability, duration and level of care. MHR providers shall rate recipients on the CALOCUS/LOCUS at 90 day intervals, or at an interval otherwise specified by the bureau, and these scores and supporting documentation must be submitted to the bureau or its designee upon request. Ongoing services must be requested every 90 days based on progress towards goals, individual needs, and level of care requirements which are consistent with the medical necessity criteria.

E. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1086 (May 2005), amended LR 32:2067 (November 2006), LR 34:

Chapter 7. Provider Participation Requirements

Subchapter A. Certification and Enrollment

§703. Application

A. To be certified and enrolled as an MHR provider to offer one or more optional services, or recertified as a provider, requires that the provisions of this Subpart 1, the provider manual and the appropriate statutes are met.

B. Initial Certification and Enrollment. An applicant who elects to enroll with the department to provide MHR services shall apply to the Bureau of Health Services Financing or its designee for certification. The applicant shall create and maintain documents to substantiate that the applicant meets all prerequisites in order to enroll as a Medicaid provider of MHR services.

C. An applicant shall submit the following documents for certification:

1. MHR initial certification application;

2. Medicaid Basic Enrollment Packet for Entities/Businesses;

3. enrollment packet for the Louisiana Medical Assistance Program-Mental Health Rehabilitation;

4. enrollment packet for the Louisiana Medical Assistance Program-Physician, individual or group, if applicable;

5. proof of a request for accreditation and a copy of the completed application with a national accrediting body approved by the bureau and proof of payment to the accrediting body. Proof of full accreditation is required within nine months of issuance of a Medicaid provider enrollment number;

6. an affidavit that identifies the applicant's licensed mental health professional and psychiatrist, including verification of current licensure. The LMHP identified must be an employee of the applicant;

7. proof of the establishment and maintenance of a line of credit from a federally insured, licensed lending institution in an amount equal to three months of current operating expenses as proof of adequate finances. A budget showing actual or projected monthly expenses shall be attached. It is the MHR provider's responsibility to notify the bureau in the event that the financial institution cancels or reduces the upper credit limit.

a. Nonprofit agencies that have operated for five years or more and have an unqualified audit report for the most recent fiscal year prepared by a licensed certified public accountant, which reflects financial soundness of the nonprofit provider, are not required to meet this standard.

b. governmental entities or organizations are exempt from this requirement;

8. a statement identifying the population to be served:

a. adults with serious mental illness; or

b. children with an emotional/behavior disorder;

9. - 16. …

17. proof of current inspection and approval by the Office of Public Health; and

18. a comprehensive administrative policy and procedure manual that describes an administrative structure to provide MHR services as defined and required by the bureau.

D. The MHR provider shall have a separate Medicaid provider number for each location where it routinely conducts business and provides scheduled services. This does not include those sites or locations that meet the definition of an off-site service delivery location.

E. Optional Services Certification. An applicant who elects to offer one or more optional services shall apply to the Bureau of Health Services Financing or its designee. The applicant shall create and maintain documents to substantiate that the provider meets all prerequisites for certification.

1. An applicant shall submit the following documents for certification:

a. MHR Optional Services Certification application;

b. comprehensive implementation plan;

c. proof of current inspection and approval of the site for psychosocial rehabilitation (PSR), by the Office of State Fire Marshal;

d. proof of current inspection and approval of the site for PSR, by the Office of Public Health; and

e. proof that the supervising LMHP for PSR is a Certified Psychosocial Rehabilitation Practitioner (CPRP). If the LMHP is not a CPRP, submit a written plan for achieving certification within 12 months of the provider's certification or within 12 months of being hired.

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 31:1086 (May 2005), amended LR 32:2069 (November 2006), LR 34:

§705. Application and Site Reviews

A. An applicant shall undergo one or more of the following reviews by the department or its designee before certification to provide mandatory or optional services to

ensure compliance with provider enrollment and operational requirements:

1. an application review;
2. a first site review; and if necessary
3. a second site review.

B. The bureau or its designee may conduct a review of all application documents for compliance with MHR requirements. The certification application must be approved by the bureau prior to the first site review of the applicant's physical location.

1. If the application documentation furnished by the applicant is not acceptable, the applicant will be notified of the deficiencies.

a. The applicant has 30 days to correct the documentation deficiencies. If the applicant fails to resubmit the application or if the application is not approved, certification may be denied.

2. Following approval of the application, the applicant will have 30 days to schedule the first site review.

a. If the applicant does not request a site visit within 30 days, certification may be denied.

b. If the applicant requests a site visit within 30 days a site review may be scheduled.

3. If the site meets all operational requirements, the certification request may be approved and forwarded to Provider Enrollment for further processing.

4. If at the site review all operational requirements are not met, the provider will be notified of the deficiencies.

a. The applicant will have 30 days from the date of the notice of deficiency to correct any deficiencies and request a second site review.

b. A second site review may be conducted if deemed necessary by the bureau.

c. If the applicant fails to correct all deficiencies or to schedule a second site review, certification may be denied.

d. If the application documentation furnished by the applicant is not acceptable, the applicant will be notified of the deficiencies.

e. The applicant has 30 days to correct the documentation deficiencies. If the applicant fails to resubmit the application or if the application is not approved, certification may be denied.

5. Following approval of the application, the applicant will have 30 days to schedule the first site review. If the applicant does not request a site visit within 30 days, certification may be denied.

6. If the applicant requests a site visit within 30 days a site review may be scheduled.

7. If the site meets all operational requirements, the certification request may be approved and forwarded to Provider Enrollment for further processing.

8. If at the site review all operational requirements are not met, the provider will be notified of the deficiencies.

a. The applicant will have 30 days from the date of the notice of deficiency to correct and deficiencies and request a second site review.

b. A second site review may be conducted if deemed necessary by the bureau.

c. If the applicant fails to correct all deficiencies or to schedule a second site review, certification may be denied.

C. A prospective provider that fails certification on its original or a subsequent application shall undergo the entire review process detailed above, if and when it reapplies for certification.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:802 (April 2004), amended LR 31:1087 (May 2005), LR 32:2070 (November 2006), LR 34:

§707. Failure to Achieve Certification/Recertification

A. If the applicant fails to meet any of the application or certification requirements, and certification is denied, they may not be enrolled as an MHR provider and may not reapply for one year from the date of the notice of failure to achieve certification.

B. If the applicant fails to meet any recertification requirements and recertification is denied, the provider may be terminated and may not reapply for one year from the date of the notice of termination.

C. There may be an immediate loss of certification if at any time the enrolled MHR provider fails to maintain program requirements or accreditation status. The provider may not reapply for certification for one year following the effective date of termination.

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 31:1087 (May 2005), amended LR 32:2070 (November 2006), LR 34:

Subchapter B. Accreditation

§719. Accreditation

A. Currently enrolled providers and applicants to become providers of mental health rehabilitation service shall be accredited by a national accreditation organization for any services for which Medicaid reimbursement will be requested. The department shall only accept accreditation from the following national organizations for the purposes of enrolling a provider into the Mental Health Rehabilitation (MHR) Program:

A.1. - B.3. …

C. If at any time, an MHR provider loses accreditation, an automatic loss of certification may occur. The applicant may not reapply for one year from the effective date of the termination.

D. Failure to notify the department of accreditation denial, loss of accreditation status or any negative change in accreditation status may result in sanctions to the mental health rehabilitation agency.

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 31:1088 (May 2005), amended LR 32:2071 (November 2006), LR 34:

Subchapter C. Provider Responsibilities

§731. General Provisions

A. - H.3.a. …

b. has at least five active recipients authorized to receive services at the time of any monitoring review, other than the initial application review;

H.3.c. - J.2. …

§737. Staffing Qualifications

A. MHR services shall be provided by individuals who meet the following education and experience requirements.

1. Licensed Mental Health Professional (LMHP). A LMHP is a person who has a graduate degree in a mental health-related field from an accredited institution and is licensed to practice in the state of Louisiana by the applicable professional board of examiners. All college degrees must be from a nationally accredited institution of higher education as defined in Section 102(b) of the Higher Education Act of 1965 as amended. In order to qualify as a mental health-related field, an academic program must have curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines. Additionally, an LMHP who conducts assessments or reassessments must meet all Approved Clinical Evaluator (ACE) standards and requirements specified by the bureau including, but not limited to, specialized training and demonstrated competency in completing valid assessments. The following professionals are considered to be LMHPs.

a. Psychiatrist. Each MHR provider shall implement and maintain a contract with a psychiatrist(s) to provide consultation and/or services on site as medically necessary. The psychiatrist must be a licensed medical doctor (M.D. or D.O.) who is board-certified or board-eligible, authorized to practice psychiatry in Louisiana, and enrolled to participate in the Louisiana Medicaid Program. A board eligible psychiatrist may provide psychiatric services to MHR recipients if he/she meets all of the following requirements.

i. The physician must hold an unrestricted license to practice medicine in Louisiana and unrestricted DEA and state and federal controlled substance licenses. If licenses are held in more than one state or jurisdiction, all licenses held by the physician must be documented in the employment record and also be unrestricted.

ii. The physician must have satisfactorily completed a specialized psychiatric residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME), as evidenced by a copy of the certificate of training or a letter of verification of training from the training director which includes the exact dates of training and verification that all ACGME requirements have been satisfactorily met. If training was completed in child and adolescent psychiatry, the training director of the child and adolescent psychiatry program must document the child and adolescent psychiatry training. If training was completed in a psychiatric residency program not accredited by the ACGME, the physician must demonstrate that he/she meets the most current requirements as set forth in the American Board of Psychiatry and Neurology's Board Policies, Rules and Regulations regarding Information for Applicants for Initial Certification in Psychiatry.

NOTE: All documents must be maintained and readily retrieved for review by the bureau or its designee.

b. Psychologist—an individual who is licensed as a practicing psychologist under the provisions of R.S. 37:2351–2367;

c. Advanced Practice Registered Nurse (APRN)—an individual who is licensed as an advanced practice registered nurse by the Louisiana State Board of Nursing. An APRN must:

i. be certified by a nationally recognized certifying body such as the American Nurses Credentialing Center;

ii. be a clinical nurse specialist or nurse practitioner holding a master's degree with a concentration in one of the following specialties:

(a). adult psychiatric and mental health;

(b). child/adolescent psychiatric and mental health;

(c). family psychiatric and mental health; or

(d). psychiatric and mental health;

iii. operate under an approved collaborative practice agreement with a board-certified or board-eligible psychiatrist;

iv. be enrolled in the Louisiana Medicaid Program as a nurse practitioner or clinical nurse specialist; and

v. have two years of supervised post master's experience in the delivery of mental health services.

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

d. Social Worker—an individual who has a master's degree in social work from an accredited school of social work and is a licensed clinical social worker under the provisions of R.S. 37:2701–2723.

e. Licensed Professional Counselor—an individual who has a master's degree in a mental health related field, is licensed under the provisions of R.S. 37:1101–1115 and has two years post-masters experience in mental health.

2. Mental Health Professional (MHP). The MHP is an individual who has a master's degree in a mental health-related field, with a minimum of 15 hours of graduate-level course work and/or practicum in applied intervention strategies/methods designed to address behavioral, emotional and mental disorders as a part of, or in addition to, the master's degree.

NOTE: The MHP must be an employee of the MHR provider and work under the supervision of a LMHP.

3. Mental Health Specialist (MHS). The MHS is an individual who meets one or more of the following criteria:

a. a bachelor's degree in a mental health related field; or

b. a bachelor's degree, enrolled in college and pursuing a graduate degree in a mental health-related field, and have completed at least two courses in that identified field; or

c. a high school diploma or a GED, and at least four years experience providing direct services in a mental health, physical health, social services, education or corrections setting.

NOTE: The MHS must be an employee of the MHR provider and work under the supervision of a LMHP.

4. Nurse. A registered nurse who is licensed by the Louisiana Board of Nursing or a licensed practical nurse who is licensed by the Louisiana Board of Practical Nurse Examiners may provide designated components of medication management services if he/she meets the following requirements.

a. A registered nurse must have:

i. a bachelor's degree in nursing and one year of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; or

ii. an associate degree or diploma in nursing and two years of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

b. A licensed practical nurse may perform medication administration if he/she has:

i. one year of experience as a psychiatric nurse which must have occurred no more than five years from the date of employment/contract with the MHR provider; and

ii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to any recipient.

NOTE: Every registered nurse and licensed practical nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

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 31:1089 (May 2005), amended LR 32:2072, LR 34:

Chapter 11. Sanctions

§1103. Applicable Sanctions

A. - A.2 …

3. Requests for new authorizations or reauthorizations may be denied until program compliance is verified.

4. – 5. …

6. Individuals employed by the provider may be suspended or excluded from providing MHR services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended LR 34:

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 Emergency Rule. A public hearing on this proposed Rule is scheduled for Tuesday, July 29, 2008 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th 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 receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Mental Health Rehabilitation Program

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 07-08. It is anticipated that $1,836 ($918 SGF and $918 FED) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 07-08. It is anticipated that $918 will be collected in FY 07-08 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend the provisions governing the Mental Health Rehabilitation Program to: 1) clarify staffing requirements, medical necessity criteria, provider participation requirements and provider responsibilities; and 2) remove the application fee requirement for prospective MHR providers (although in current rule, this fee was never collected). It is anticipated that implementation of this proposed rule will not have an estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 07-08, FY 08-09 and FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Jerry Phillips
Medicaid Director
0806#074

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

Minimum Licensing Standards for Adult Day Health Care
(LAC 48:I.Chapter 42)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 48:I.Chapter 42 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.41-46, and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Human Resources, Office of Family Security adopted a Rule to implement Adult Day Health Care as a Medicaid home and community based services waiver in the Medical Assistance Program (*Louisiana Register, Volume 8, Number 3*). The department subsequently adopted Rules to establish and later amend the provisions governing the standards for payment for this service program (*Louisiana Register,* Volumes 11, 13 and 14, Numbers 6, 3 and 11). The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated the provisions governing adult day health care services in order to establish the standards in its rightful place in the *Louisiana Administrative Code (Louisiana Register,* Volumes 23 and 30, Number 9). In January 2008, the department promulgated a Notice of Intent proposing to amend the standards for payment for adult day

health care to remove those provisions governing licensing from LAC 50:XXI and repromulgate the licensing standards in LAC 48:I *(Louisiana Register,* Volume 34, Number 1). As a result of public hearing comments received, the department now proposes to republish the licensing standards governing ADHC centers to provide further clarification of the provisions included in the January 20, 2008 Notice of Intent.

Title 48
PUBLIC HEALTH—GENERAL
Part 1. General Administration
Subpart 3. Licensing and Certification
Chapter 42. Adult Day Health Care
Subchapter A. General Provisions
§4201. Introduction

A. The purpose of Adult Day Health Care (ADHC) services is to provide an alternative to or a possible prevention or delay of 24-hour institutional care by furnishing direct care for a portion of the day to adults who have physical, mental, or functional impairments. An ADHC shall be operational for at least five hours each day of operation. An ADHC center shall be operational for at least five days per week. An ADHC center shall protect the health, safety, welfare, and well-being of participants attending ADHC centers.

B. An ADHC center shall have a written statement describing its philosophy as well as long-term and short-term goals. The provider program statement shall include goals that:

1. promote the participant's maximum level of independence;
2. maintain the participant's present level of functioning as long as possible, while preventing or delaying further deterioration;
3. restore and rehabilitate the participant to the highest level of functioning;
4. provide support and education for families and other caregivers;
5. foster participation, socialization and peer interaction; and
6. serve as an integral part of the community services network and the long-term care continuum of services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4203. Definitions

Activities of Daily Living (ADL)—the functions or tasks which are performed either independently or with supervision, or assistance for mobility (i.e., transferring, walking, grooming, bathing, dressing and undressing, eating and toileting).

Adult Day Health Care (ADHC)—a medical model adult day health care program designed to provide services for medical, nursing, social, and personal care needs to adults who have physical, mental or functional impairments. Such services are rendered by utilizing licensed professionals in a community based nursing center.

Adult Day Health Care Center—any place owned or operated for profit or nonprofit by a person, society, agency, corporation, institution, or any group wherein two or more functionally impaired adults who are not related to the owner or operator of such agency are provided with adult day health care services. This center type will be open and providing services at least five continuous hours in a 24-hour day.

Change of Ownership (CHOW)—a change in the legal provider/entity responsible for the operation of the ADHC center.

Chemical Restraint—any drug that is used for discipline or convenience and when it is not required to treat medical symptoms.

Complaints—allegations of noncompliance with regulations filed by someone other than the provider.

Department—the Louisiana Department of Health and Hospitals (DHH) and its representatives.

Direct Care Staff—unlicensed staff who provide personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who are involved in face-to-face direct contact with the participant.

Director—a full time person engaged in the day-to-day management of the center in which management activities shall be the major function of the required duties.

Elopement—to slip away or run away.

Functionally Impaired Adults—persons 17 years of age or older who are physically and/or mentally impaired and require services and supervision for medical, nursing, social, and personal care needs.

Governing Body—the person or group of persons that assumes full legal responsibility for determining, implementing and monitoring policies governing the ADHC's total operation, and who is responsible for the day-to-day management of the ADHC program, and must also insure that all services provided are consistent with accepted standards of practice.

Individualized Service Plan—an individualized written program of action for each participant's care and services to be provided by the ADHC center based upon an assessment of the participant.

Involuntary discharge/transfer—a discharge or transfer of the participant from the ADHC center that is initiated by the center.

Licensed Practical Nurse (LPN)—an individual currently licensed by the Louisiana State Board of Practical Nurse Examiners to practice practical nursing in Louisiana. The LPN works under the supervision of a registered nurse.

Minimal Harm—negative impact of injury causing the least possible physical or mental damage.

Participant—an individual who attends an adult day health care center.

Physical Restraint—any manual method (ex: therapeutic or basket holds and prone or supine containment) or physical or mechanical device material (ex: arm splints, leg restraints, lap trays that the participant cannot remove easily, posey belts, posey mittens, helmets), or equipment attached or adjacent to the participant's body that interferes or restricts freedom of movement or normal access to one's body and cannot be easily removed by the participant.

Primary Care Physician—a physician, currently licensed by the Louisiana State Board of Medical Examiners, who is designated by the participant or his personal representative as responsible for the direction of the participant's overall medical care.

Program Manager—a full–time designated staff person, formerly known as the program director, who is responsible

for carrying out the center's individualized program for each participant.

Progress Notes—ongoing assessments of the participant which enable the staff to update the individualized service plan in a timely, effective manner.

Registered Nurse (RN)—an individual currently licensed by the Louisiana State Board of Nursing to practice professional nursing in Louisiana.

Personal Representative—an adult relative, friend or guardian of a participant who has an interest or responsibility in the participant's welfare. This individual may be designated by the participant to act on his/her behalf and should be notified in case of emergency and/or any change in the condition or care of the participant.

Revocation—action taken by the department to terminate an ADHC center's license.

Social Service Designee/Social Worker—an individual responsible for arranging any medical and/or social services needed by the participant.

Voluntary Discharge/Transfer—a discharge or transfer of the participant from the ADHC center that is initiated by the participant or a legal or personal representative.

Volunteer—a person who provides services at an adult day health care center without compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4205. Licensure Requirements

A. All ADHC centers shall be licensed by the Department of Health and Hospitals (DHH). DHH is the only licensing authority for ADHC centers in the State of Louisiana. It shall be unlawful to operate an ADHC center without possessing a current, valid license issued by DHH. The license shall:

1. be issued only to the person/entity named in the license application;

2. be valid only for the ADHC center to which it is issued and only for the specific geographic address of the center;

3. be valid for one year from the date of issuance, unless revoked prior to that date;

4. expire on the last day of the twelfth month after the date of issuance, unless otherwise renewed;

5. not be subject to sale, assignment, or other transfer, voluntary or involuntary; and

6. be posted in a conspicuous place on the licensed premises at all times.

B. In order for an ADHC center to be considered operational and retain licensed status, the center shall meet the following conditions.

1. The center shall always have at least one employee on duty at the business location during daily hours of operation. Once a participant is admitted, all staff that are required to provide services on a full time basis shall be on duty during operational hours.

2. There shall be staff employed and available to be assigned to provide care and services to persons receiving services at all times.

3. The center must have admitted or has provided services to at least two participants in the past 12 months prior to their licensure resurvey.

C. The licensed provider is required to abide by and adhere to any state laws, rules, policy and procedure manuals or memorandums pertaining to ADHC centers issued by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4207. Initial License Application Process

A. An initial application for licensing as an ADHC center shall be obtained from the department. A completed initial license application packet for an ADHC center shall be submitted to and approved by DHH prior to an applicant providing ADHC services. An applicant shall submit a completed initial licensing packet to DHH, which shall include:

1. a completed ADHC licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural center plans from the Department of Health and Hospitals, Department of Engineering and Architectural Services and the Office of the State Fire Marshal;

3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal;

4. a copy of the health inspection report with approval of occupancy report of the center from the Office of Public Health;

5. a copy of criminal background checks on all owners;

6. proof of financial viability including;

a. line of credit issued from a federally insured, licensed lending institution in the amount of at least $50,000;

b. general and professional liability insurance of at least $300,000; and

c. worker's compensation insurance;

7. if applicable, clinical laboratory improvement amendments (CLIA) certificate or CLIA certificate of waiver;

8. a completed disclosure of ownership and control information form;

9. a floor sketch or drawing of the premises to be licensed;

10. the days and hours of operation; and

11. any other documentation or information required by the department for licensure.

B. If the initial licensing packet is incomplete, the applicant will be notified of the missing information and will have 90 days to submit the additional requested information. If the additional requested is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ADHC provider shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

C. Once the initial licensing application packet is approved by DHH, the applicant shall attend a mandatory preparatory training class conducted quarterly by the department's Health Standards Section (HSS) before the initial licensure survey will be conducted. Once the provider has successfully completed the class, the provider will be

sent written notification with instructions for requesting the announced initial licensing survey.

D. An applicant who has received the notification with instructions for requesting the announced initial licensing survey shall notify DHH of readiness for an initial licensing survey within 90 days of the date of receipt of that notification. If an applicant fails to notify DHH of readiness for an initial licensing survey within 90 days, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ADHC provider shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

E. Applicants must be in compliance with all appropriate federal, state, departmental, or local statutes, laws, ordinances, rules, regulations, and fees before the ADHC center will be issued an initial license to operate by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4209. Initial Licensing Surveys

A. Prior to the initial license being issued to the ADHC provider, an initial licensing survey shall be conducted on-site at the ADHC center to assure compliance with ADHC licensing standards.

B. In the event that the initial licensing survey finds that the ADHC center is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

C. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws or regulations that are a threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any other required statutes, laws, ordinances, rules or regulations that are a threat to the health, safety, or welfare of the participants, the department shall deny the initial license.

E. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws or regulations, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue a provisional initial license for a period not to exceed six months. The provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, then a full license will be issued. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

F. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any required statutes, laws, ordinances, rules or regulations, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue a provisional initial license for a period not to exceed six months. The provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional license will expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

G. The initial licensing survey of an ADHC provider shall be an announced survey. Follow-up surveys to the initial licensing surveys are not announced surveys.

H. Once an ADHC provider has been issued an initial license, the department shall conduct licensing surveys at intervals deemed necessary by DHH to determine compliance with licensing regulations; these licensing surveys shall be unannounced.

1. A follow-up survey shall be conducted for any licensing survey where deficiencies have been cited to ensure correction of the deficient practices.

2. The Department may issue appropriate sanctions, including, but not limited to:

a. civil monetary penalties;

b. directed plans of correction; and

c. license revocations for deficiencies and noncompliance with any licensing survey.

I. DHH surveyors and staff shall be given access to all areas of the center and all relevant files during any licensing survey. DHH surveyors and staff shall be allowed to interview any provider staff or participant as necessary to conduct the survey.

J. When issued, the initial ADHC license shall specify the maximum number of participants which may be served by the ADHC center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4211. Types of Licenses

A. The Department shall have the authority to issue the following types of licenses:

1. In the event that the initial licensing survey finds that the ADHC center is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license unless the license is modified, revoked, suspended, or terminated.

2. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, the department is authorized to issue a provisional initial license pursuant to the requirements and provisions of this §4209.

3. The Department may issue a full renewal license to an existing licensed ADHC provider who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date

shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. The Department, in its sole discretion, may issue a provisional license to an existing licensed ADHC provider for a period not to exceed six months, for the following reasons:

a. the existing ADHC provider has more than five deficient practices or deficiencies cited during any one survey;

b. the existing ADHC provider has more than three validated complaints in one licensed year period;

c. the existing ADHC provider has been issued a deficiency that involved placing a participant at risk for serious harm or death;

d. the exiting ADHC provider has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey;

e. the existing ADHC provider is not in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations, and fees at the time of renewal of the license.

5. When the department issues a provisional license to an existing licensed ADHC provider, the department shall conduct an on-site follow-up survey at the ADHC center prior to the expiration of the provisional license. If that on-site follow-up survey determines that the ADHC provider has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the ADHC license.

6. If an existing licensed ADHC provider has been issued a notice of license revocation, suspension, modification, or termination, and the provider's license is due for annual renewal, the department shall issue a renewal license subject to the pending license revocation, suspension, modification, or termination, if a timely administrative appeal has been filed. The renewal of such a license does not affect in any manner the license revocation, suspension, modification or termination. The renewal of such a license does not render any such license revocation, suspension, modification, or termination moot. This type of license is valid for the pendency of the administrative appeal, provided that the renewal fees are timely paid.

B. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the provider.

C. The license for an ADHC provider shall be valid for one year from the date of issuance unless revoked, suspended, modified, or terminated prior to that time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4213. Renewal of License

A. License Renewal Application. The ADHC provider shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;
2. the days and hours of operation;
3. a current fire inspection report;
4. a current health inspection report;
5. the license renewal fee; and
6. any other documentation required by the department.

B. The department may perform an on-site survey and inspection upon annual renewal of a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4215. Reporting Requirements

A. The following changes, or any combination thereof, shall be reported in writing to the department within five working days of the occurrence of the change. A change in:

1. the name of the ADHC center;
2. the geographical or mailing address;
3. contact information, i.e. telephone number, fax number, email address; or
4. key administrative staff (i.e., director, program manager, social service designee, staff nurse, etc).

B. Change of Ownership (CHOW). The license of an ADHC center is not transferable to any other ADHC or individual. A license cannot be sold. When a change of ownership occurs, the ADHC provider shall notify the Health Standards Section in writing within 15 days prior to the effective date of the CHOW.

1. A signed copy of the legal document showing the transfer of ownership shall be provided to HSS.
2. Other required documents are to be submitted to HSS within five working days of the effective date of the CHOW.
3. The new owner must submit a license application indentifying all new information and it must be submitted with the appropriate CHOW licensing fee.
4. An ADHC center that is under license revocation may not undergo a CHOW.

C. Any change which requires a change in the license shall be accompanied by a fee. Any request for a duplicate license shall be accompanied by a fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4217. Denial of License, Revocation of License, Denial of License Renewal

A. The Department may deny an application for a license, may deny a license renewal, or may revoke a license in accordance with the provisions of the Administrative Procedures Act.

B. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws or regulations that are a threat to the health, safety, or welfare of the participants.
2. The department shall deny an initial license in the event that the initial licensing survey finds that the ADHC center is noncompliant with any other required statutes, laws, ordinances, rules, or regulations that are a threat to the health, safety, or welfare of the participants.

3. The department shall deny any initial license for any of the reasons designated in this §4217.D. that a license may be revoked or non-renewed.

C. Voluntary Non-Renewal of License. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

D. Revocation of License or Denial of License Renewal. An ADHC license may be revoked or may be denied renewal for any of the following reasons including, but not limited to:

1. failure to be in substantial compliance with the ADHC licensing laws, rules, and regulations;

2. failure to be in substantial compliance with other required statutes, laws, ordinances, rules, and regulations;

3. failure to uphold participant rights whereby deficient practices may result in harm, injury, or death of a participant;

4. failure to protect a participant from a harmful act of an employee including, but not limited to:

a. abuse, neglect, exploitation, or extortion;

b. any action posing a threat to a participant's health and safety;

c. coercion;

d. threat or intimidation; or

e. harassment;

5. failure to notify the proper authorities of all suspected cases of neglect, criminal activity, mental or physical abuse, or any combination thereof;

6. knowingly making a false statement in any of the following areas including, but not limited to:

a. application for initial license or renewal of license;

b. data forms;

c. participant records;

d. matters under investigation by the department or the Office of the Attorney General;

e. information submitted for reimbursement from any payment source;

7. knowingly making a false statement or providing false, forged, or altered information or documentation to DHH employees or to law enforcement agencies;

8. the use of false, fraudulent, or misleading advertising;

9. an owner, officer, member, manager, director, or person designated to manage or supervise participant care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court;

a. For purposes of this paragraph, conviction of a felony means a felony relating to the violence, abuse, or negligence of a person, or a felony relating to the misappropriation of property belonging to another person.

10. failure to comply with all reporting requirements in a timely manner as required by the department;

11. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview provider staff or participants.

12. failure to allow, or refusal to allow, access to authorized departmental personnel to records;

13. bribery, harassment, or intimidation of any participant designed to cause that participant to use the services of any particular ADHC provider; or

14. cessation of business or non-operational status.

E. In the event an ADHC license is revoked or renewal is denied, (other than for cessation of business or non-operational status) any owner, officer, member, manager, or director of such ADHC center is prohibited from owning, managing, directing, or operating another ADHC center for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4219. Notice and Appeal of License Denial, Revocation, and Non-Renewal

A. Notice of a license denial, license revocation, or license non-renewal shall be given to the provider in writing.

B. The ADHC provider has a right to an informal reconsideration of the license denial, license revocation, or license non-renewal.

1. The ADHC provider shall request the informal reconsideration within 15 days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section.

2. The request shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request is received by HSS, an informal reconsideration shall be scheduled and the provider will receive written notification.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the denial, revocation or non-renewal, shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal of the license denial, revocation, or non-renewal.

C. The ADHC provider has a right to an administrative appeal of the license denial, license revocation, or license non-renewal.

1. The ADHC provider shall request the administrative appeal within 30 days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for administrative appeal shall be in writing and shall be submitted to the DHH Bureau of Appeals.

2. The request for administrative appeal shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the Bureau of Appeals, the license revocation or license non-renewal will be suspended during the pendency of the appeal. However, if the Secretary of the department determines that the violations of the center pose an imminent or immediate threat to the health, safety, or welfare of a

participant, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the Secretary of the department makes such a determination, the center will receive written notification.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or non-renewal, shall not be a basis for the administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4221. Complaint Surveys

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13 et seq.

B. Complaint surveys shall be unannounced surveys.

C. A follow-up survey will be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices.

D. The department may issue appropriate sanctions including, but not limited to civil monetary penalties, directed plans of correction, and license revocations for deficiencies and noncompliance with any complaint survey.

E. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff and participant as required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4223. Statement of Deficiencies

A. Any statement of deficiencies issued by the department to the ADHC provider shall be posted in a conspicuous place on the licensed premises.

B. Any statement of deficiencies issued by the department to the ADHC provider shall be available for disclosure to the public 30 days after the provider submits an acceptable plan of correction to the deficiencies or 90 days after the statement of deficiencies is issued to the provider, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter B. Administration and Organization

§4225. Governing Body

A. The center shall have a governing body with responsibility as an authority over the policies and activities of the center.

1. The center shall have documents identifying the following information regarding the governing body:

a. names and addresses of all members;

b. terms of membership, if applicable;

c. officers of the governing body, if applicable; and

d. terms of office of all officers, if applicable.

2. When the governing body is composed of more than one person, formal meetings shall be held at least twice a year.

3. The governing body shall have by-laws specifying frequency of meetings and quorum requirements.

4. The center shall have written minutes of all formal meetings of the governing body.

5. A single person or owner may govern a privately owned and operated center. This person would assume all responsibilities of the governing body.

B. Governing Body Responsibilities. The governing body of an ADHC center shall:

1. ensure the center's compliance and conformity with the center's charter;

2. ensure the center's continual compliance and conformity with all relevant federal, state, parish and municipal laws and regulations;

3. ensure that the center is adequately funded and fiscally sound;

4. review and approve the center's annual budget;

5. ensure that the center is housed, maintained, staffed and equipped appropriately considering the nature of the program;

6. designate a person to act as the director and delegate sufficient authority to this person to manage the center and to insure that all services provided are consistent with accepted standards of practice;

7. formulate and annually review, in consultation with the director, written policies concerning the center's philosophy, goals, current services, personnel practices and fiscal management;

8. annually evaluate the director's performance;

9. have the authority to dismiss the director;

10. meet with designated representatives of DHH whenever required to do so; and

11. inform designated representatives of DHH prior to initiating any substantial changes in the program, services or physical plant of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4227. Policy and Procedures

A. An ADHC center shall have a written program plan describing the services and programs that it furnishes.

B. The center shall have written policies and procedures governing all areas of care and services provided by the center that are available to staff, participants, and/or sponsors. These policies and procedures shall:

1. ensure that each participant receives the necessary care and services to promote his/her highest level of functioning and well-being;

2. reflect awareness of the medical and psychosocial needs of participants as well as provisions for meeting those needs, including admission, transfer, and discharge planning; and the range of services available to participants;

3. be developed in consultation with a group of professional personnel consisting of at least a licensed physician, the director, and a registered nurse;

4. govern access, duplication and dissemination of information from the participant's personal and medical record;

5. establish guidelines to protect any money or other personal items brought to the ADHC center by participants;

6. describe the process for participants to file a grievance with the center and/or register a complaint with the department;

a. the DHH toll-free telephone number for registering complaints shall be posted conspicuously in public areas of the ADHC center;

7. be available to the participant's physician of choice;

8. be revised as necessary, but reviewed by the professional group at least annually; and

9. be approved by the governing body.

C. The director, or his designee, is responsible for the execution of ADHC center policies and he/she shall be accessible to center staff or designated representatives of DHH at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4229. Fiscal Accountability

A. A center shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

B. A center shall demonstrate fiscal accountability through regular recording of its finances.

C. A center shall not permit funds to be paid or committed to be paid to any entity in which any member of the governing body or administrative personnel, or members of their immediate families, have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the center.

1. The center shall provide a written disclosure of any financial transaction regarding the center in which a member of the governing body, administrative personnel, or his/her immediate family is involved.

D. The center shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4231. Administrative Records

A. A center shall have administrative records that include:

1. documents identifying the governing body;

a. a list of the officers and members of the governing body, their addresses and terms of membership, if applicable;

b. by-laws of the governing body and minutes of formal meetings, if applicable;

2. documentation of the center's authority to operate under state law;

3. an organizational chart for the center;

4. all leases, contracts and purchase-of-service agreements to which the center is a party;

5. insurance policies;

6. annual budgets and audit reports; and

7. a master list of all other programs and services used by the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4233. Participant Case Records

A. A center shall have an organized record system which includes a written case record for each participant. The case record shall contain administrative and treatment data from the time of admission until the time that the participant leaves the center.

B. The participant's case record shall include:

1. identifying information such as:

a. name;

b. birth date;

c. home address;

d. Social Security number;

e. marital status;

f. gender;

g. ethnic group; and

h. religion;

2. identifying information for the participant's personal representative, if applicable, such as:

a. name;

b. address; and

c. telephone number;

3. social and medical history including:

a. a complete record of admitting diagnoses and any treatments that the participant is receiving;

b. history of serious illness, serious injury or major surgery;

c. allergies to medication;

d. a list of all prescribed medications and non-prescribed drugs currently used;

e. current use of alcohol; and

f. the name of the participant's personal physician and an alternate;

4. complete health records, when available, including physical, dental and/or vision examinations;

5. a copy of the participant's individual service plan including:

a. any subsequent modifications; and

b. an appropriate summary to guide and assist direct service workers in implementing the participant's program.

6. the findings made in periodic reviews of the plan including:

a. a summary of the successes and failures of the participant's program; and

b. recommendations for any modifications deemed necessary;

7. a signed physician's order, issued prior to use, when restraints in any form are being used;

8. any grievances or complaints filed by the participant and the resolution or disposition of these grievances or complaints;

9. a log of the participant's attendance and absences;

10. a physician's signed and dated orders for medication, treatment, diet, and/or restorative and special medical procedures required for the safety and well-being of the participant;

11. progress notes that:

a. document the delivery of all services identified in the individualized service plan;

b. document that each staff member is carrying out the approaches identified in the individualized service plan that he/she is responsible for;

c. record the progress being made and discuss whether or not the approaches in the individualized service plan are working;

d. record any changes in the participant's medical condition, behavior or home situation which may indicate a need for a change in the individualized service plan; and

e. document the completion of incident reports, when appropriate; and

NOTE: Each individual responsible for providing direct services shall record progress notes at least weekly, but any changes to the participant's condition or normal routine should be documented on the day of the occurrence.

12. discharge planning and referral.

C. All entries made by center staff in participants' records shall be legible, signed and dated.

D. The medications and treatments administered to participants at the center must be charted by the appropriate staff.

E. The center shall ensure that participant case records are available to staff who are directly involved with participant care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4235. Retention of Records

A. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state laws. An ADHC center shall have sufficient space, facilities and supplies for providing effective record-keeping services.

B. All records concerning past or present medical conditions of participants are confidential and must be maintained in compliance with the provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The expressed written consent of the participant must be obtained prior to the disclosure of medical information regarding the participant.

C. The participant's medical record shall consist of the active participant record and the ADHC center's storage files or folders. As this active record becomes bulky, the outdated information shall be removed and filed in the ADHC center's storage files or folders. The active medical records shall contain the following information:

1. the necessary admission records;

2. at least six months of current pertinent information relating to the participant's active ongoing care; and

3. if the ADHC center is aware that a participant has been interdicted, a statement to this effect shall be noted on the inside front cover of the record.

D. Upon request, the ADHC center shall make all records, including participant records, available to the applicable federal and state regulatory agencies in order to determine the center's compliance with applicable federal and state laws, rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4237. Confidentiality and Security of Records

A. A center shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the ADHC center and as custodian, the center shall secure records against loss, tampering or unauthorized use.

B. A center shall maintain the confidentiality of all participants' case records. Employees of the center shall not disclose or knowingly permit the disclosure of any information concerning the participant or his/her family, directly or indirectly, to any unauthorized person.

C. A center shall obtain the participant's written, informed permission prior to releasing any information from which the participant or his/her family might be identified, except for authorized federal and state agencies or another program with professional interest in the participant.

D. The ADHC center shall safeguard the confidentiality of participant information and shall release confidential information only under the following conditions:

1. by court order; or

2. by the participant's written authorization, unless contraindicated as documented in the participant's record by the attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter C. Participant Rights

§4239. Statement of Rights

A. Each participant shall be informed of his/her rights and responsibilities regarding the ADHC center. The regulations of the ADHC center and all rules governing participant conduct and behavior shall be fully explained to the participant. Before or upon admission, the ADHC center shall provide a copy of the participant rights document to each participant. Each participant must acknowledge receipt of this document in writing and the signed and dated acknowledgment form shall be filed in the participant's record.

B. If the ADHC center changes its participant rights policies, each participant must acknowledge receipt of the change(s) in writing and the acknowledgment shall be filed in the participant's records.

C. The center shall have a written policy on participant civil rights. This policy shall give assurances that:

1. a participant's civil rights are not abridged or abrogated solely as a result of placement in the ADHC center's program; and

2. a participant is not denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, religion or ethnic background.

D. The participant rights document shall include at least the following items:

1. the right to be informed, in writing, of:
   a. all services available at the ADHC center;
   b. the charges for those services; and
   c. the center's hours of operation;

2. the right to participate in each interdisciplinary staffing meeting and any other meeting involving the care of the participant;

3. the right to refuse any service provided in the ADHC center;

4. the right to present complaints or recommend changes regarding the center's policies and services to staff or to outside representatives without fear of restraint, interference, coercion, discrimination or reprisal;

5. the right to be free from mental or physical abuse;

6. the right to be free from active or mechanical physical restraints, except when there is imminent risk of harm to the participant or others, and only after the least restrictive methods have been attempted.

a. Physical restraint shall be used only when ordered by the primary care physician.

i. The physician's order for restraint must specify the reason for using restraint and include a specific time frame for using restraint.

ii. The physician order shall be filed in the participant's record.

b. Physical restraint may be used without a physician's order in an emergency only under the following conditions:

i. use of restraint is necessary to protect the participant from injuring himself/herself or others; and

ii. use of restraint is reported at once to the primary care physician.

c. Participants who are mechanically restrained shall be monitored at least every 30 minutes to insure that circulation is not impaired and that positioning is comfortable.

d. Participants being mechanically restrained shall be released and be provided the opportunity for exercise at least every two hours. The ADHC center staff shall document this activity each time the participant is released.

7. the right to be treated with consideration, respect and full recognition of his or her dignity and individuality;

8. the right to privacy during the provision of personal needs services;

9. the right to communicate, associate, and meet privately with individuals of his/her choice, unless this infringes on the rights of another participant; and

10. the right not to be required to perform services for the ADHC center, except when the performance of a specific service is identified in the individualized service plan as an appropriate approach to meeting a need or resolving a problem of the participant.

E. A friendly, supportive, comfortable, and safe atmosphere shall be maintained at all times, and all participants shall be treated equitably with respect, kindness, and patience.

F. Each participant shall be encouraged and assisted to exercise his/her rights as a participant at the ADHC center and as a citizen.

G. Devolution of Participant Rights. If the participant rights have devolved to the personal representative or next of kin, that party shall receive the explanation of and sign the participant rights and any other documents described in these standards. Under the following conditions, the ADHC center shall ensure that participant rights devolve to the personal representative or next of kin.

1. The participant has been interdicted in a court of law. In such cases, the ADHC center shall ensure that the participant's rights devolve to the curator/curatrix of record. The ADHC center shall obtain an official document verifying that the participant has indeed been interdicted and the interdiction must be documented on the inside front cover of the participant's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter D. ADHC Center Services

§4241. Mandatory Daily Program Components

A. There shall be a planned daily program of both individual and group activities which is sufficiently varied and structured so as to directly involve the participants in a stimulated and meaningful use of time while at the center. Emphasis shall be given to maintaining and improving the participants' functional abilities.

B. Participants shall be encouraged to take part in the planning and directions of activities. Programming shall allow for active and passive participation.

C. Centers shall provide a detailed description of individual and group activities that are being provided to participants on a daily basis and shall make this information available upon request. This information shall also be made available to participants and their families.

D. When available, community resources may be used to provide educational programs, lectures, concerts and similarly stimulating activities to participants.

E. An arts and crafts activities program may be available to make use of the rehabilitative as well as the recreational values of such pastimes. A supply of materials adequate to accommodate all participants shall be on hand for this program.

F. An outdoor activities program, such as gardening or walking, may be maintained where space, weather, and participants' health permit.

G. A daily rest period may be incorporated into the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4243. Core Services

A. At a minimum, each center shall provide the following services:

1. individualized training or assistance with the activities of daily living (toileting, grooming, ambulation, etc.);

2. health and nutrition counseling;

3. an individualized, daily exercise program;

4. an individualized, goal-directed recreation program;

5. daily health education;

6. one nutritionally-balanced hot meal and two snacks served each day;

7. nursing services that include the following individualized health services:

a. monitoring vital signs appropriate to the diagnosis and medication regimen of each participant no less frequently than monthly;

b. administering medications and treatments in accordance with physician's orders;

c. initiating and developing a self administration of medication plan for the ADHC center which is individualized for each participant for whom it is indicated; and

8. transportation to and from the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4245. Transportation Requirements

A. The center will provide transportation to and from the ADHC center at the beginning and end of the program day. The center must comply with the following requirements governing transportation.

1. The center shall have liability insurance coverage and have proof of such coverage.

2. The center must conform to all State laws and regulations pertaining to drivers, vehicles and insurance.

B. The driver shall hold a valid chauffeur's license or commercial driver license (CDL) with passenger endorsement.

1. The driver shall meet personal and health qualifications of other staff.

C. The number of occupants allowed in a car, bus, station wagon, van, or any other type of transportation shall not exceed the number for which the vehicle is designed.

D. Provisions shall be made to accommodate participants who use assistive devices for ambulation.

E. The vehicle shall be maintained in good repair.

F. In a center-owned transportation vehicle, there shall be at least one staff member in the vehicle who is trained in first-aid and cardio pulmonary resuscitation (CPR).

G. If the center contracts with a commercial proprietor for transportation, it shall select one with a good reputation and reliable drivers. All rules established for transportation furnished by the center shall be observed.

H. If the center develops a policy that establishes a limited mileage radius for transporting participants, that policy must be submitted to DHH for review and approval prior to the center being allowed to limit transportation for participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter E. Participant Care

§4249. Medical Services

A. Medical services shall be provided by the participant's physician of choice.

B. The center shall have a listing of available medical services for referral. When referrals are made, the center shall follow-up to see that the participant is receiving services.

C. Appropriate staff shall immediately notify the participant's physician and the legal or personal representative of any emergency, change in condition or injury to the participant that occurs at the center.

1. In areas where 911 services are not available, the center shall have means to transport participants for medical emergencies.

2. In cities or communities that have a city or community wide ambulance service (fire department or other emergency medical service), a statement in the center files regarding available emergency transportation services and the method of contact for the service will be acceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4251. Nursing Services

A. All nursing services furnished in the ADHC center shall be provided in accordance with acceptable nursing professional practice standards.

B. A registered nurse (RN) shall serve on the Interdisciplinary (ID) team and shall monitor the overall health needs of the participants. The RN serves as a liaison between the participant and medical resources, including the treating physician.

1. The RN's responsibilities include medication review for each participant at least monthly and when there is a change in the medication regime to:

a. determine the appropriateness of the medication regime;

b. evaluate contraindications;

c. evaluate the need for lab monitoring;

d. make referrals to the primary care physician for needed monitoring tests;

e. report the efficacy of the medications prescribed; and

f. determine if medications are properly being administered in the center.

C. The RN shall supervise the method of medication administration to participants (both self-administration and staff administration).

D. The RN shall approve the method of medication storage and record-keeping.

E. The staff nurse shall document the receipt of all prescribed medications for each participant with a legible signature and will comply with all Louisiana laws and rules regarding medication control and disbursement.

F. The RN shall give in-service training to both staff and participants on health related matters.

G. The RN shall ensure that diagnoses are compiled into a central location in the participant's record and updated when there is a change.

H. The RN shall monitor and supervise any staff licensed practical nurse (LPN) providing care and services to participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4253. Nutrition Services

A. There shall be a hot, well-balanced noon meal served daily which provides one-third of the recommended dietary allowances (RDA) as established by the National Research Council and American Dietetic Association. Accommodations shall be made for participants with special diets.

1. There shall be a mid-morning snack served daily in centers where breakfast is not served.

2. There shall be a mid-afternoon snack served daily.

B. Menus shall be varied and planned and approved well in advance by a registered dietitian. Any substitutions shall be of comparable nutritional value and documented.

C. All food and drinks shall be of safe quality.

D. Drinking water shall be readily available and offered to participants.

E. Food preparation areas and utensils cleaning procedures shall comply with the State Sanitary Code.

F. A registered dietitian shall:

1. review all orders for special diets;

2. prepare menus as needed; and

3. provide in-service training to staff and, as appropriate, participants.

G. Documentation of these reviews and recommendations shall be available in the participant case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4255. Social Work Services

A. All social work services shall be provided in accordance with acceptable professional social work practice standards.

B. A Social service designee or social worker shall serve on the ID team and shall monitor the overall social needs of the participant.

C. Social services, as a part of an interdisciplinary spectrum of services, shall be provided to the participants to:

1. maximize the social functioning of each participant;

2. enhance the coping capacity of the participant and, as appropriate, his family;

3. assert and safeguarding the human and civil rights of participants; and

4. foster the human dignity and personal worth of each participant.

D. While the participant is receiving ADHC services, the social service designee or social worker shall, as appropriate, serve as a liaison between the participant and the center, their family and the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter F. Human Resources

§4259. Personnel Policies

A. An ADHC center shall have personnel policies that include:

1. a written plan for recruitment, screening, orientation, in-service training, staff development, supervision and performance evaluation of all staff members;

2. written job descriptions for each staff position, including volunteers;

3. a health assessment which includes, at a minimum, evidence that the employee is free of active tuberculosis and that staff are retested on a time schedule as mandated by the Office of Public Health;

4. a written employee grievance procedure;

5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment in accordance with state law, whether the abuse or mistreatment is committed by another staff member, a family member or any other person; and

6. prevention of discrimination.

B. A center shall not discriminate in recruiting or hiring on the basis of sex, race, creed, national origin or religion.

C. A center's screening procedures shall address the prospective employee's qualifications, ability, related experience, health, character, emotional stability and social skills as related to the appropriate job description.

1. A center shall obtain written references from three persons (or prepare documentation based on telephone contacts with three persons) prior to making an offer of employment. The names of the references and a signed release must be obtained from the potential employee.

D. Annual performance evaluations shall be completed for all staff members.

1. For any person who interacts with participants, the performance evaluation procedures shall address the quality and nature of a staff member's relationships with participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4261. Orientation and Training

A. A center's orientation program shall provide training for new employees to acquaint them with the philosophy, organization, program, practices and goals of the center. The orientation shall also include instruction in safety and emergency procedures as well as the specific responsibilities of the employee's job.

B. A center shall document that all employees receive training on an annual basis in;

1. the principles and practices of participant care;

2. the center's administrative procedures and programmatic goals;

3. emergency and safety procedures;

4. protecting the participant's rights;

5. procedures and legal requirements concerning the reporting of abuse and neglect;

6. acceptable behavior management techniques,

7. crisis management; and

8. use of restraints (manual method, mechanical or physical devices).

C. A center shall ensure that each direct service worker completes no less than 20 hours of face-to-face training per year. Orientation and normal supervision shall not be considered for meeting this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4263. Personnel Files

A. An ADHC center shall have a personnel file for each employee that shall contain:

1. the application for employment and/or resume;

2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;

3. any required medical examinations;

4. evidence of applicable professional credentials/certifications according to state law;

5. annual performance evaluations;

6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the center; and

7. the employee's starting and termination dates.

B. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement that he/she wishes to make to the file at any time.

C. An ADHC center shall retain an employee's personnel file for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter G. Center Responsibilities

§4265. General Provisions

A. A center shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to ensure that the center's responsibilities are carried out and that the following functions are adequately performed:

1. administrative functions;

2. fiscal functions;

3. clerical functions;

4. housekeeping, maintenance and food service functions;

5. direct service functions;

6. supervisory functions;

7. record-keeping and reporting functions;

8. social services functions; and

9. ancillary service functions;

B. The center shall ensure that all staff members are properly certified and/or licensed as legally required.

C. The center shall ensure that an adequate number of qualified direct service staff is present with the participants as necessary to ensure the health, safety and well-being of participants.

1. Staff coverage shall be maintained giving consideration to the time of the day, the size and nature of the center and the needs of the participants.

D. The center shall not knowingly hire, or continue to employ, any person whose health, educational achievement, emotional or psychological makeup impairs his/her ability to properly protect the health and safety of the participants or is such that it would endanger the physical or psychological well-being of the participants.

1. This requirement is not to be interpreted to exclude the continued employment of persons undergoing temporary medical or emotional problems in any capacities other than direct services.

E. If any required professional services are not furnished by center employees, the center shall have a written agreement with an appropriately qualified professional to perform the required service or written agreements with the State for required resources.

F. The center shall establish procedures to assure adequate communication among staff in order to provide continuity of services to the participant. This system of communication shall include:

1. a regular review of individual and aggregate problems of participants, including actions taken to resolve these problems;

2. sharing daily information, noting unusual circumstances and other information requiring continued action by staff; and

3. the maintenance of all accidents, personal injuries and pertinent incidents records related to implementation of the participant's individual service plans.

G. Any employee who is working directly with participant care shall have access to information from participant case records that is necessary for the effective performance of the employee's assigned tasks.

H. The center shall establish procedures which facilitate participation and feedback by staff members in policy-making, planning and program development for participants.

I. At all times, there shall be a staff member in the center who has knowledge of and can apply first aid and who is certified in CPR.

J. In the absence of the director, a staff member shall be designated to supervise the center.

K. The center shall not provide service to more participants than the number specified on its license on any given day or at any given time.

L. The center shall make available to DHH any information, which the center is required to have under these standards and is reasonably related to the assessment of compliance with these standards. The participant's rights shall not be considered abridged by this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4267. Staffing Requirements

A. ADHC staff shall meet the following education and experience requirements. All college degrees must be from a nationally accredited institution of higher education as defined in §102(b) of the Higher Education Act of 1965 as amended. The following staff positions are required; however, one person may occupy more than one position except for those positions that require full time status. No staff person shall occupy more than three positions at a given time.

1. Director. The director shall have a bachelor's degree in a human services-related field, such as social work, nursing, education, or psychology. Two years of responsible supervisory experience working in a human service-related field may be substituted for each year of college.

2. Social Service Designee/Social Worker. The center shall designate at least one full-time staff person to serve as the social services designee or social worker.

a. The social services designee shall have at a minimum a bachelor's degree in a human service-related field such as psychology, sociology, education, or counseling. Two years of experience in a human service-related field may be substituted for each year of college.

b. The social worker shall have a bachelor's or master's degree in social work.

3. Nurse. The center shall employ a full-time LPN or RN who shall be available to provide medical care and supervision services as required by all participants. The staff nurse shall be on the premises of the center during all hours that participants are present.

a. Nurses shall have a current Louisiana state license.

4. Program Manager. The center shall designate at least one full-time staff member who is responsible for carrying out the center's individualized program for each participant. The program manager should have program planning skills, good organization abilities, counseling and occupational therapy experience.

5. Food Service Supervisor. The center shall designate one full-time staff member who shall be responsible for meal preparation and/or serving.

6. Volunteers. Volunteers and student interns are considered a supplement to the required staffing component. A center which utilizes volunteers or student interns on a regular basis shall have a written plan for utilizing these resources. This plan must be given to all volunteers and interns and it shall indicate that all volunteers and interns shall be:

a. directly supervised by a paid staff member;

b. oriented and trained in the philosophy of the center and the needs of participants as well as the methods of meeting those needs;

c. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;

d. aware of and briefed on any special needs or problems of participants; and

e. provided program orientation and ongoing in-service training. The in-service training should be held at least quarterly.

7. Direct Service Worker. An unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well being, and who is involved in face-to-face direct contact with the participant.

B. The direct care staff to participant ratio shall be a minimum of one full-time staff member to every nine participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4269. Incident Reports

A. There shall be policies and procedures which cover the writing of and disposition of incident reports.

1. The center shall complete incident reports for each participant involved in the following occurrences:

a. accidents and injuries;

b. the involvement of any participant in any occurrence which has the potential for affecting the welfare of any other participant;

c. any elopement or attempted elopement, or when the whereabouts of a participant is unknown for any length of time; and

d. any suspected abuse, whether or not it occurred at the center.

B. Progress notes documented on the day of the incident shall indicate that an incident report was written.

C. The completed individual incident report shall be filed in a central record system.

D. Incident reports shall include, at a minimum, the following information:

1. the name of the participant or participants;

2. the date and time of the incident;

3. a detailed description of the incident;

4. the names of witnesses to the incident and their statements; and

5. a description of the action taken by the center with regard to the incident.

E. Incident reports must be reviewed by the director, his designee or a medical professional within 24 hours of the occurrence. A qualified professional shall recommend action, in a timely manner, as indicated by the consequences of the incident.

F. ID team members shall review all incident reports quarterly, and recommend action as indicated to:

1. insure that the reports have all of the required information;

2. identify staff training needs;

3. identify patterns which may indicate a need for changes in the center policies/practices; and

4. assist in identifying those participants who may require changes in their plans of care or who may not be appropriately placed in the ADHC center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter H. Direct Service Management

§4273. Admissions

A. A center shall have a written description of its admission policies and criteria. The admission information for individual participants shall include:

1. the participant's name, date of birth, home address and telephone number;

2. the name, address and telephone number of the participant's closest relative or friend;

3. a brief social history that includes the participant's marital status, general health status, education, former occupation, leisure-time interest and existence of supportive family members or friends;

4. the name, address and telephone number of the participant's physician and/or medical center as well as the date of participant's last physical exam;

5. a nursing assessment summary performed by the center's staff nurse at the time of the participant's admission to the center which includes:

a. special dietary needs;

b. prescribed medication;

c. allergies;

d. any limitations on activity;

e. the degree to which the participant is ambulant;

f. visual or hearing limitations and/or other physical impairments;

g. apparent mental state or degree of confusion or alertness;

h. the ability to control bowel or bladder;
i. the ability to feed self;
j. the ability to dress self; and
k. the ability to self-administer medication.

NOTE: The Minimum Data Set Home Care (MDS/HC) can be used in place of the nursing assessment summary.

B. The center shall not refuse admission to any participant on the grounds of race, sex or ethnic origin.

C. The center shall not knowingly admit any participant into care whose presence would be seriously damaging to the ongoing functioning of the center or to participants already receiving services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4275. Discharge

A. The center shall have written policies and procedures governing voluntary discharges (the participant withdraws from the program on his/her own) and non-voluntary discharges (center initiated discharges).

1. The policy may include the procedures for non-voluntary discharges due to the health and safety of the participant or that of other participants if they would be endangered by the further stay of a particular participant in the center.

B. There shall be a written report detailing the circumstances leading to any discharge.

C. Prior to a planned discharge, the center's ID Team shall formulate an aftercare plan specifying needed supports and the resources available to the participant.

D. When the participant is going to another home and community-based program or institutional center, discharge planning shall include the participant's needs, medication history, social data and any other information that will assist in his/her care in the new program or center.

1. A center member of the ID Team shall confer with the representatives of the new program regarding the individual needs and problems of the participant, if at all possible.

2. Upon discharge, the center shall provide a summary of the participant's health record to the person or agency responsible for the future planning and care of the participant. The discharge summary shall include:

a. medical diagnoses;
b. medication regimen (current physicians orders);
c. treatment regimen (current physicians orders);
d. functional needs (inabilities);
e. any special equipment utilized (dentures, ambulatory aids, eye glasses, etc.);
f. social needs;
g. financial resources; and
h. any other information which will enable the receiving center/caregivers to provide the continued necessary care without interruption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4277. Interdisciplinary Team Responsibilities

A. It shall be the responsibility of the ID team to assess and develop an individualized service plan for each participant prior to or within 20 days of admission of a participant.

B. Prior to the individual staffing of a participant by the ID team, each team member shall complete an assessment to be used at the team meeting. This assessment shall, at a minimum, include a medical evaluation and a social evaluation.

C. The ID team shall meet, reassess, and reevaluate each participant at least annually, but will meet at the end of each quarter to review the current individualized service plan and ensure that it is adequate for each participant.

D. The ID team shall make referrals, as indicated, to other disciplines and for any service which would enhance the functional capacity of a participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4279. Interdisciplinary Team-Composition

A. The ID team may be composed of either full-time staff members, contractual consultants or a combination of both.

B. The ID team shall be composed of:

1. a registered nurse licensed to practice in the state of Louisiana;
2. a social service designee/social worker; and
3. at least one direct care staff person from the center.

C. In addition, dietitians, physical therapists, occupational therapists, recreational therapists, physicians and others may sit on the team to staff an individual participant on an as needed basis.

D. The participant, and/or family members or legal or personal representative if appropriate, shall be involved in the ID team staffing and any other meeting involving the care needed by the participant while receiving services at the ADHC center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4281. Individualized Service Plan

A. The participant's ADHC individualized service plan shall:

1. be developed from the staffing performed by the ID team of each participant;
2. state the individual needs and identified problems of the participant for which intervention is indicated in assessments, progress notes and medical reports;
3. include the number of days and time of scheduled attendance required to meet the needs of the participant;
4. use the strengths of the participant to develop approaches and list these approaches with the frequency that each will be used to meet the needs of the participant;
5. identify the staff member who will be responsible for carrying out each item in the plan (the position, rather than the name of the employee, may be indicated in the plan);

6. ensure that all persons working with the participant are appropriately informed of the services required by the individualized service plan;

7. propose a reasonable time-limited goal with established priorities. The projected resolution date or review date for each problem shall be noted;

8. contain the necessary elements of the self-administration or other medication administration plan, if applicable;

9. include discharge as a goal;

10. be legible and written in terminology which all staff personnel can understand;

11. be signed and dated by all the team members; and

12. be included as a part of the participant's case record.

B. Unless it is clearly not feasible to do so, a center shall ensure that the individualized service plan and any subsequent revisions are explained to the participant and, where appropriate, the legally responsible person/personal representative or family member in language understandable to these persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4283. Individualized Service Plan Review

A. The individualized service plan shall be reviewed and updated at least quarterly and whenever there is a change in problems, goals or approaches as indicated.

B. This review shall be done by the person indicated on the plan as the individual primarily responsible for carrying out the plan.

C. This review shall be accomplished by reviewing the individual reports of all persons responsible for meeting the needs of the participant. These reports shall include any reports from physicians, social service designees/social workers, nurses, therapists, dietitians, and family members as well as incident reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter I. Emergency and Safety

§4285. Emergency and Safety Procedures

A. A center shall have a written overall plan of emergency and safety procedures. The plan shall:

1. provide for the evacuation of participants to safe or sheltered areas;

2. include provisions for training staff and, as appropriate, participants in preventing, reporting and responding to fires and other emergencies;

3. provide means for an on-going safety program including continuous inspection of the center for possible hazards, continuous monitoring of safety equipment, and investigation of all accidents or emergencies; and

4. include provisions for training personnel in their emergency duties and in the use of any fire-fighting or other emergency equipment in their immediate work areas.

B. The center shall ensure the immediate accessibility of appropriate first aid supplies in kits that are to be located in the center's building and all vehicles used to transport participants.

C. A center shall have access to telephone service whenever participants are in attendance.

1. Emergency telephone numbers shall be posted for easy access, including fire department, police, medical services, poison control and ambulance.

D. A center shall immediately notify DHH and other appropriate agencies of any fire, disaster or other emergency which may present a danger to participants or require their evacuation from the center.

E. There shall be a policy and procedure that insures the notification of family members or responsible parties whenever an emergency occurs for an individual participant.

F. Upon the identification of the non-responsiveness of a participant at the center, the center's staff shall implement the emergency medical procedures and notify the participant's family members and other medical personnel.

G. A center shall conduct emergency drills at least once every three months.

H. A center shall make every effort to ensure that staff and participants recognize the nature and importance of such drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4287. General Safety Practices

A. A center shall not maintain any firearms or chemical weapons where participants may have access to them.

B. A center shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers that are labeled as to the contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of participants, staff and visitors.

C. The center shall not have less than two remote exits.

D. Doors in means of egress shall swing in the direction of exit travel.

E. Every bathroom door lock shall be designed to permit opening of the locked door from the outside in an emergency, and the opening device shall be readily accessible to the staff.

F. Unvented or open-flame heaters shall not be utilized in center.

G. All exterior and interior doors used by participants must be at least 32 inches wide.

H. All hallways/corridors must be at least 36 inches wide.

I. At least one primary entrance shall be accessible to people with disabilities or impairments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

Subchapter J. Physical Environment

§4289. General Appearance and Conditions

A. The center shall present an attractive outside and inside appearance and be designed and furnished with consideration for the special needs and interests of the

population to be served as well as the activities and services to be provided.

1. Illumination levels in all areas shall be adequate and careful attention shall be given to avoiding glare.

2. The design shall facilitate the participant's movement throughout the center and involvement in activities and services.

3. Heating, cooling and ventilation system(s) shall permit comfortable conditions.

4. Sufficient furniture shall be available to facilitate usage by the entire participant population in attendance.

5. Furniture and equipment that will be used by participants shall be selected for comfort and safety as well as be appropriate for use by persons with visual and mobility limitations, and other physical disabilities.

6. Floors and steps shall have a non-slippery surface and be dry when in use by the participants. Doorways and passageways shall be kept clear to allow free and unhindered passage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4291. Space Requirements

A. The center shall have sufficient space and equipment to accommodate the full range of program activities and services.

B. The center shall provide at least 40 square feet of indoor space for each participant. The square footage excludes hallways, offices, restrooms, storage rooms, kitchens, etc.

C. The center shall be flexible and adaptable for large and small groups and individual activities and services.

D. There shall be sufficient office space to permit staff to work effectively and without interruption.

E. There shall be adequate storage space for program and operating supplies.

F. There shall be sufficient parking area available for the safe daily delivery and pick-up of participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4293. ADHC Furnishings

A. The center must be furnished so as to meet the needs of the participants. All furnishings and equipment shall be kept clean and in good repair.

B. Lounge and Recreational Areas. Adequate furniture shall be available and shall be appropriate for use by the participants in terms of comfort and safety.

C. Dining Area. Furnishings must include tables and comfortable chairs sufficient in number to serve all participants. Meals may be served either cafeteria style or directly at the table depending upon the method of food preparation or physical condition of the participants.

D. Kitchen. If the center has a kitchen area, it must meet all health and sanitation requirements and must be of sufficient size to accommodate meal preparation for the proposed number of participants.

E. Toilet Facilities. There shall be sufficient toilet and hand-washing facilities to meet the needs of both males and females. The number of toilets and hand- washing facilities shall be not less than one for each 12 participants.

1. There shall be at least two toilet facilities when males and females are served.

2. Toilets and hand-washing facilities shall be equipped so as to be accessible for people with disabilities.

F. Isolation/Treatment Room. There shall be a separate room or partitioned area for temporarily isolating a participant in case of illness. This room may be furnished with a bed or a recliner for the participant's use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

§4295. Location of Center

A. An adult day health care center that is located within any center or program that is also licensed by the department must have its own identifiable staff, space, and storage. These centers must meet specific requirements if they are located within the same physical location as another program that is also licensed by the department.

1. The program or center within which the ADHC center is located must meet the requirements of its own license.

B. New centers may not be located within 1,500 feet of another adult day health care center unless both centers are owned and managed by the same organization.

C. The location or site of an ADHC center shall be chosen so as to be conducive to the program and the participants served.

D. ADHC Centers within Nursing Centers. An adult day care center can only be located within a nursing center when the following conditions are met.

1. Space required for licensure of the nursing center cannot be utilized as space for the licensure of the adult day care center.

2. If space to be used for the ADHC center is nursing center bedroom space, the number of beds associated with the space occupied by the ADHC program must be reduced from the licensed capacity of the nursing center.

3. There must be separate staff for both programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:

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, and autonomy as described in R.S. 49:972.

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 Tuesday, July 29, 2008, 2008 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Minimum Licensing Standards for Adult Day Health Care

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 07-08. It is anticipated that $5,712 (SGF) will be expended in FY 07-08 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections.

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

This rule proposes to amend the standards for payment to make technical amendments to the standard for payments for adult day health care to remove the provisions governing licensing from LAC 50:XXI and repromulgate the licensing standards in LAC 48:I. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 07-08, FY 08-09 and FY 09-10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0806#071

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Corrections Services

Offender Incentive Pay and Other Wage Compensation
(LAC 22:I.331)

In accordance with the provisions of R.S. 15:871 and 15:873, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to promulgate the contents of Section 331, Offender Incentive Pay and Other Wage Compensation.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part I. Corrections
Chapter 3. Adult Services and Juvenile Services
Subchapter A. General
§331. Offender Incentive Pay and Other Wage Compensation

A. Purpose. To establish the secretary's policy regarding payment of incentive wages and other wage compensations to offenders.

B. Applicability. Chief of Operations, Undersecretary, Assistant Secretary, Director of Prison Enterprises and all Wardens. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that compensation shall be paid to all offenders who have served at least three years of their sentence in the physical custody of the department and who have performed satisfactory work in the job assignment in which they have been classified (except those offenders who opt to receive good time in lieu of incentive wages in accordance with R.S. 15:571.3).

1. An offender sentenced or resentenced or who is returning to the physical custody of the department on or after the effective date of this regulation who is not eligible to earn good time at any rate shall serve three years from the date of reception before becoming eligible to earn compensation.

a. Grandfather Clause—the provisions of this regulation are applicable to offenders received at the reception and diagnostic centers on or after the effective date of this regulation. Offenders received at reception and diagnostic centers prior to this date shall be subject to the waiting period previously in effect for this regulation. Offenders who are currently receiving incentive pay will not be affected and will continue to be eligible to receive incentive pay as they did on the effective date of this regulation but shall be subject to the provisions of Paragraph C.2. as it applies to job changes.

2. Once eligible to earn incentive pay, each offender shall initially be paid an introductory pay level of $0.02 per hour for a period of six months. After six months, the offender shall be paid at the lowest pay rate that is commensurate with the job assignment he is placed in by the institution. In the event of a change in an offender's job assignment or custody status, the offender's rate of compensation shall automatically be adjusted to the lowest pay rate of the assigned job.

a. Grandfather Clause—offenders earning incentive pay at any rate, prior to the effective date of this regulation, shall continue to earn at these rates. If the offender is reassigned to a new job or vacates the job for any reason and it has been determined the rate of pay for the job that he is leaving should be lower, the next offender to fill that position will receive the adjusted lower rate.

3. An offender may receive a raise in his hourly pay rate of no greater than $0.04 per hour on an annual basis unless specifically authorized by mutual agreement of the director of Prison Enterprises and the warden of the respective institution.

4. No offender shall earn more than 80 hours in a two-week period unless specifically authorized by mutual agreement of the director of Prison Enterprises and the warden of the respective institution.

a. Exception—offenders assigned to job duties at the governor's mansion will not be limited to 80 hours bi-weekly.

5. An offender sentenced or re-sentenced or who is returning to the physical custody of the department on or after the effective date of this regulation will not be eligible to earn incentive wages, if the offender is eligible to earn good time at any rate.

a. Grandfather Clause—offenders currently earning good time at a rate of three days for every seventeen days served in accordance with Act 1099 of the 1995 Regular Session who are also earning incentive pay will be allowed to continue to earn incentive pay at authorized rates.

6. Any offender who has his incentive pay forfeited as a disciplinary sanction shall return to the introductory pay level of $0.02 per hour for a six month period upon reinstatement of his right to earn incentive pay. At the end of the six month period, the offender's pay will be automatically adjusted to the lowest pay rate for the assigned job.

7. A series of pay ranges and a standardized list of job titles will be established by the director of prison enterprises and approved by the secretary or designee. The institutions will be assigned limits on the total amount of incentive wages paid in certain pay ranges. These limits will be derived on a percentage basis determined by the total hours worked by offenders who are eligible to earn incentive pay at each institution and shall be approved by the director of prison enterprises and the secretary or designee. Prison enterprises will issue reports detailing each institution's status with regard to their limits on a quarterly basis. Offender banking will monitor the assigned limits to ensure that the institutions remain within their limits and report discrepancies to the chief of operations, the appropriate regional warden, the director of prison enterprises and the warden of the institution.

a. The regional wardens shall work closely with the director of Prison Enterprises to ensure that any institution that exceeds the established limits is brought back into compliance in an expeditious manner.

b. Exception—offenders who work in Prison Enterprises job titles will not affect an institution's pay range percentage limits.

8. Incentive wages shall not be paid for extra duty assignments that are imposed as sanctions through the offender disciplinary process.

9. All offenders classified in limited duty status (as defined in Health Care Policy HC-15) and who are eligible to earn incentive wages shall earn at a rate of no more than $0.04 per hour. This excludes offenders classified as regular duty with restrictions or those with a temporary limited duty status.

10. All offenders classified in working cellblocks and maximum custody field lines who are eligible to earn incentive wages shall earn at the rate of $0.02 per hour.

11. All offenders assigned to educational or vocational programs who are eligible to earn incentive wages shall be paid at the rate of $0.04 per hour.

a. Exception—due to the importance of the New Orleans Baptist Theological Seminary program and its positive impact on the department, offenders enrolled in this program will earn incentive wages at the following rates.

i. Freshmen: $0.14
ii. Sophomores: $0.16
iii. Juniors: $0.18
iv. Seniors: $0.20

b. Upon completion of any educational or vocational program, the offender may, upon request and at the discretion of the warden and based upon availability, return to the same job at the same rate of pay he held prior to enrollment in the program.

12. Offenders who are eligible to earn incentive wages shall be paid only for actual hours worked in their job assignment. Offenders shall not be paid for time spent away from their job assignment due to circumstances such as holidays, callouts, duty status, weather, illness, etc.

13. For the purpose of this regulation, income earned from a private sector/prison industry enhancement (PS/PIE) program or a work release program is not incentive pay. Therefore, offenders employed in any of these programs may receive good time in accordance with the law. The director of prison enterprises shall establish record-keeping procedures relating to wages earned by offenders employed in a PS/PIE program that include all mandatory deductions from offender wages, other deductions such as child support or garnishment and the distribution of net offender wages to offender banking.

D. Sources of Funding

1. The Division of Prison Enterprises shall pay all incentive wages.

2. Offenders who are employed in a certified PS/PIE program shall be paid by the private business that employs them or by prison enterprises depending on the type of PS/PIE program that is in operation, in accordance with the terms stated in the employment agreement.

3. Offenders who are participating in a work release program shall be paid by the private business that employs them, in accordance with the terms outlined in the employment agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:871 and R.S. 15:873.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:

Family Impact Statement

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

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804, until 4:30 p.m. on July 11, 2008.

James M. Le Blanc
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Offender Incentive Pay and Other Wage Compensation

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

Prison Enterprises currently pays approximately $1.3 million dollars per year in incentive pay to offenders for work performed while incarcerated. It is estimated that a reduction of 3% will be recognized in year 1 or $39,000, 5% in year 2 or $63,050 and 1% in year 3 or $11,980. This equates to a projected cumulative 3 year savings of $114,030 based upon implementation of this rule and associated revised hourly rates of pay to offenders.

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 is a 3 year estimated cost of $114,000 to affected persons or non-governmental groups due to disciplinary actions on offenders earning incentive pay, job assignment changes, and how much offenders were earning before these actions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

B.E. "Trey" Boudreaux III
Undersecretary
0806#050

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Income Tax Credits for Wind or Solar Energy Systems
(LAC: 61:I.1907)

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1907 relative to income tax credits for wind or solar energy systems.

Act 371 of the 2007 Regular Session of the *Louisiana Legislature* enacted R.S. 47:6026 to allow an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana homeowner or the owner of a residential rental apartment project located in the state. The section was redesignated as R.S. 47:6030 pursuant to the statutory revision authority of the Louisiana State Law Institute. This proposed Rule will clarify the application of the credits for those taxpayers who purchase and install wind or solar energy systems.

This Notice of Intent was originally published in the December 2007 and March 2008 editions of the Louisiana Register. Based upon comments received at an April 2008 Public Hearing, changes were made giving rise to this revised Notice of Intent. These changes primarily involve an exception to the general rule allowing the credit only for complete systems and can be found at LAC 61:I.1907(D)(1)(a).

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions
§1907. Income Tax Credits for Wind or Solar Energy Systems

A. Revised Statute 47:6030 provides an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana homeowner or the owner of a residential rental apartment project located in the state. In order for costs associated with the purchase and installation of a wind or solar energy system to qualify for this credit, the expenditure must be made on or after January 1, 2008. The amount of the credit is equal to 50 percent of the first $25,000 of the cost of each wind or solar energy system.

B. Definitions

Charge Controller—an apparatus designed to control the state of charge of a bank of batteries.

Grid-Connected, Net Metering System—a wind or solar electric system interconnected with the utility grid in which the customer only pays the utility for the net energy used from the utility minus the energy fed into the grid by the customer. All interconnections must be in accordance with the capacity, safety and performance interconnection standards adopted as part of the Louisiana Public Service Commission's, the New Orleans City Council's, or other Louisiana utility regulatory entities, as appropriate, established Net Metering rules and procedures.

Inverter—an apparatus designed to convert direct current (DC) electrical current to alternating current (AC) electrical energy. Modern inverters also perform a variety of safety and power conditioning functions that allow them to safely interconnect with the electrical grid.

Photovoltaic Panel—a panel consisting of a collection of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

Residence—a single family dwelling, one dwelling unit of a multi-family, owner occupied complex, or one residential dwelling unit of a rental apartment complex. All eligible residences must be located in Louisiana.

Solar Electric System—a system consisting of photovoltaic panels with the primary purpose of converting sunlight to electrical energy and all equipment and apparatus necessary to connect, store and process the electrical energy for connection to and use by an electrical load.

Solar Thermal System—a system consisting of a solar energy collector with the primary purpose of converting sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling.

Supplemental Heating Equipment—a device or apparatus installed in a solar thermal system that utilizes energy sources other than wind or sunlight to add heat to the system, with the exception of factory installed auxiliary heat strips that are an integral component of a specifically engineered solar hot water storage tank.

Wind Energy System—a system of apparatus and equipment with the primary purpose of intercepting and

converting wind energy into mechanical or electrical energy and transferring this form of energy by a separate apparatus to the point of use or storage.

C. Household Eligibility for Wind and/or Solar Energy Systems Tax Credits

1. Each residence or apartment project in the state is eligible for tax credits for the number of separate complete wind, solar electric, and solar thermal energy systems necessary to ensure that the residence or apartment project is supplied with all of its energy needs.

2. The credit for the purchase and installation of a wind energy system or solar energy system by a resident individual at his residence shall be claimed by the resident individual on his Louisiana individual income tax return.

3. The credit for the purchase and installation of a wind energy system or solar energy system by the owner of a residential rental apartment project shall be claimed by the owner on his Louisiana individual, corporate or fiduciary income tax return.

4. All wind or solar energy systems must be installed in the immediate vicinity of the residence or apartment project claiming the credit such that the electrical, mechanical or thermal energy is delivered directly to the residence or apartment project.

5. In order to claim a tax credit(s) for a wind energy system, solar electric energy system, or solar thermal energy system the components for each system must be purchased and installed at the same time as a system. Eligible components of systems are defined in Paragraphs D.2 through D.4 below.

D. Wind and Solar Energy Systems Eligible for the Tax Credit

1. The credit provided by R.S. 47:6030 is only allowed for complete and functioning wind energy systems or solar energy systems. Local and state taxes are an eligible system cost.

a. Exception to General Rule Allowing Credit Only for Complete Systems

i. In order to be eligible to receive the credit, the owner of a single unit in a multi-family residence project must have an undivided interest in the wind or solar energy system that is being installed.

ii. If a component of a wind or solar energy system is shared, documentation must be supplied dividing up the costs of the component between all those eligible for the credit.

iii. Subsequent purchasers of units in the multi-family residence not in possession of an undivided interest at the time of installation, will not be eligible for the credit.

2. Wind Energy Systems. Eligible wind energy systems under the tax credit include systems designed to produce electrical energy and systems designed to produce mechanical energy through blades, sails, or turbines and may include the following.

System Type	Eligible System Components
DC Wind Electric Generation Systems	DC output wind turbine, controllers, towers and supports, charge controllers, inverters, batteries, battery boxes, DC and AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
AC Wind Electric Generation Systems	AC output wind turbine, controllers, towers and supports, charge controllers, power conditioners/grid interconnection devices, batteries, battery boxes, AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
Mechanical Wind Systems	Mechanical output wind turbine, towers & supports, mechanical interconnection between turbine and mechanical load

3. Solar Electric Systems. Eligible solar electric systems under the tax credit include grid-connected net metering systems, grid-connected net metering systems with battery backup, stand alone alternating current (AC) systems and stand alone direct current (DC) systems, designed to produce electrical energy and may include the following.

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems	Photovoltaic panels, mounting systems, inverters, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Grid-Connected, Net Metering Solar Electric Systems with Battery Backup	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric AC Systems	Photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric DC Systems	Photovoltaic panels, mounting systems, charge controllers, batteries, battery cases, DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

4. Solar Thermal Systems. Solar thermal systems eligible under the tax credit include systems designed to produce domestic hot water, systems designed to produce thermal energy for use in heating and cooling systems and solar pool heating systems and may include the following.

System Type	Eligible System Components
Domestic Solar Hot Water Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Heating and Cooling Thermal Energy Systems	Solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Solar Pool Heating System	Solar pool heating collectors, mounting systems and devices, controllers, actuators, valves, pool covers, air elimination devices, sensors, piping and other related materials from solar pool heating collectors to interconnection with pool filtration system

5. All wind and solar energy systems for which a tax credit is claimed shall include an operations and maintenance manual containing a working diagram of the system, explanations of the operations and functions of the component parts of the system and general maintenance procedures.

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be UL listed and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

7. All solar thermal apparatus claiming the tax credit must be certified by the Solar Rating and Certification Corporation (SRCC) and installed in compliance with manufacturer specifications and all applicable building and plumbing codes.

8. Applicants applying for the tax credit on any system(s) must provide proof of purchase to the Louisiana Department of Revenue detailing the following as applicable to your particular solar or wind energy system installation:

a. type of system applying for the tax credit;

b. output capacity of the system:

i. Solar Electric Systems—total nameplate listed kW of all installed panels;

ii. Solar Thermal Systems—listed SRCC annual BTU or equivalent kWh output;

iii. Wind Electric Systems—total rated kW of all alternators and generators;

iv. Wind Mechanical Systems—shaft horsepower as rated by manufacturer, licensed contractor or licensed professional engineer;

c. physical address where the system is installed in the state;

d. total cost of the system as applied towards the tax credit separated by:

i. equipment costs;

ii. installation costs;

iii. taxes;

e. make, model, and serial number of generators, alternators, turbines, photovoltaic panels, inverters, and solar thermal collectors applied for in the tax credit;

f. name and Louisiana contractor's license number of installer;

g. copy of the modeled array output report using the PV Watts Solar System Performance Calculator developed by the National Renewable Energy Laboratory and available at the website www.nrel.gov/rredc/pvwatts . The analysis must be performed using the default PV Watts de-rate factor;

h. copy of a solar site shading analysis conducted on the installation site using a recognized industry site assessment tool such as a Solar Pathfinder or Solmetric demonstrating the suitability of the site for installation of a solar energy system.

E. Tax Exemption Eligibility of Certain Costs

1. Eligible costs—eligible costs that can be included under the tax credit are reasonable and prudent costs for equipment and installation of the wind and solar energy systems defined in Subsection B and described in Subsection D above. Equipment costs must be in accordance with Subsection D above.

a. All installations must be performed by a contractor duly licensed by and in good standing with the Louisiana Contractors Licensing Board with a classification of Solar Energy Equipment and a certificate of training in the design and installation of solar energy systems from an industry recognized training entity, or a Louisiana technical college, or the owner of the residence.

2. Ineligible Costs—labor costs for individuals performing their own installations are not eligible for inclusion under the tax credit. Supplemental heating equipment costs used with solar collectors are not eligible for inclusion under the tax credit.

3. Whenever, in return for the purchase price or as an inducement to make a purchase, marketing rebates or incentives are offered, the eligible cost shall be reduced by the fair market value of the marketing rebate or incentive received. Such marketing rebates or incentives include, but are not limited to, cash rebates, prizes, gift certificates, trips or any other thing of value given by the installer to the customer as an inducement to purchase an eligible wind or solar energy system.

4. Solar or wind energy systems or components for which tax credits are received are not eligible for a second tax credit if resold.

5. Any solar or wind energy system for which a tax credit is received must remain on the structure to which it was originally attached or on another structure located within Louisiana owned or occupied by the individual receiving the credit for a minimum of five years from the date of installation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 34:

Family Impact Statement

The proposed adoption of LAC 61:I.1907, regarding income tax credits for wind or solar energy systems should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability, and autonomy. The implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments, or comments regarding this proposed Rule to Leonore Heavey, Revenue Tax Assistant Director, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804. All comments must be submitted no later than 4:30 p.m., July 28, 2008. A public hearing will be held on July 29, 2008, at 10 a.m. in the Calcasieu Room located on the second floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Income Tax Credits for Wind or Solar Energy Systems

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

Implementation costs to the Department of Revenue for the proposed rule includes computer system modifications ($72,900), coding for the Revenue Processing Center ($2,500), and forms and instruction changes ($2,500). The Legislature did not specifically appropriate funding to the Department of Revenue to administer these proposed credits. As such, the Department of Revenue will administer these tax credits within existing resources. Implementation of the proposed rule will have no costs or savings to local governmental units.

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

State general fund revenues will decline by unknown amounts in Fiscal Year 2007-2008 and thereafter due to this proposed rule. There is no way to estimate how many individuals and companies might seek tax credits for wind or solar energy systems. Although there is a similar credit at the federal level, it was not effective until the 2006 tax year and no federal statistics are available. However, typical solar energy systems range in costs from $10,000 to $40,000, and typical wind energy systems range in cost from $25,000 to $35,000. Based on these amounts and the regulation's limitation to the first $25,000 of costs, the credit provided by this regulation would be $5,000 to $12,500 per system. The credit is refundable; so all credits earned each year will be realized against state tax liabilities in the year of purchase or installation. There should be no effect on revenue collections of local governmental units as a result of this proposed regulation.

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

The tax credit provided by R.S. 47:6030 will effectively reduce the cost of wind or solar energy systems by fifty percent up, to $25,000; and will in aggregate increase receipts of sellers, distributors, and resellers of these systems proportional to the rate of the tax credit granted.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
0806#037

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Lessors of Motor Vehicles—Electronic Filing Requirement (LAC 61:III.1511)

Under the authority of R.S. 47:1511, 1520, and 48:77 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1511. This proposed Rule will require that rentors and lessors of motor vehicles electronically submit sales tax returns to the Louisiana Department of Revenue on which their revenues from motor vehicle leasing and renting, deductions, and tax collections pertaining thereto, are distinguishable on the electronic returns from revenues, deductions, and tax collections related to other sales taxable transactions of the dealers.

R.S. 47:1520(A) authorizes the secretary to mandate electronic filing of tax returns and reports under certain circumstances, including when the report is required for dedicated fund distribution. R.S. 47:1520(A)(2) provides that the electronic filing requirement be implemented by administrative rule. R.S. 47:1520(B) contains penalty provisions for dealers' failure to comply.

Acts 2008 2nd Ex. Sess., No. 11 enacted R.S. 48:77(A) to dedicate percentages of the sales tax collections from motor vehicle leases and rentals to the Transportation Trust Fund beginning July 1, 2008. This information is not separately reported on the sales tax return and there is no space to add the lines to the current tax return. Mandated electronic filing for motor vehicle leasing and renting dealers was selected because it is the most cost-effective means to obtain the required sales tax data.

Title 61
REVENUE AND TAXATION
Part III. Department of Revenue—Administrative Provisions and Miscellaneous
Chapter 15. Electronic Filing and Payments
§1511. Lessors of Motor Vehicles—Electronic Filing Requirement

A. Definitions

Motor Vehicle—any self-propelled device used to transport people or property on the public highways.

B. R.S. 48:77 dedicates a percentage of the sales tax collections from the motor vehicle leases and rentals to the Transportation Trust Fund effective July 1, 2008.

C. Beginning with the July 2008 filing period, dealers who collect sales tax on motor vehicle leases and rentals are required to file their sales tax returns electronically with the Department of Revenue using the electronic format prescribed by the department.

1. The electronic sales tax return will provide for the separate reporting of the sales tax collected on motor vehicle leases and rentals.

2. The electronic sales tax return will provide for separate reporting of exempt motor vehicle leases and rentals.

D. Failure to comply with this electronic filing requirement will result in the assessment of a penalty of $100 or five percent of the tax, whichever is greater, as provided by R.S. 47:1520(B).

1. If it is determined that the failure to comply is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payment of the whole or any part of the penalty.

2. If the penalty exceeds $25,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1520, and 48:77.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 34:

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. Implementation of this proposed Rule will have no effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children.
6. the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond 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., Monday, July 28, 2008. A public hearing will be held on Tuesday, July 29, 2008, at 1:30 p.m. in the River Conference Room on the Seventh Floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Lessors of Motor Vehicles Electronic Filing Requirement

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

This proposed rule will require dealers who lease or rent motor vehicles to electronically submit sales tax returns in a prescribed format, use of which will enable the department to identify and dedicate sales tax revenues from motor vehicle leasing and renting in accord with the provisions of R.S. 48:77. The department's costs to design, maintain, instruct businesses in the use of the system, and to perform the accounting functions to dedicate revenues in the correct amounts to the Transportation Trust Fund are initially being absorbed within the department's existing budget. Some minimal enhancement of the department's budget will be required in the future to maintain these functions on an ongoing basis without diverting resources from other programs.

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

This proposed rule, which will require dealers who lease or rent motor vehicles to electronically submit state sales tax returns in a prescribed format, will have no impact on the revenue collections of state or local governmental units. The only impact will be to change the funds into which the revenue is placed.

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

Motor vehicle leasing and renting dealers will be required to submit their sales tax returns electronically. These businesses will typically already own the computer hardware and already have the Internet access capability to enable them to quickly submit the electronic returns required by this proposed rule. The costs to taxpayers should, therefore, be negligible.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
0806#030

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services
Office of Family Support

Support Enforcement Services Program (LAC 67:III.2305)

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 the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), Chapter 23, Subchapter A, which provides for designation of Support Enforcement Services staff. The 2006 Regular Session of the Louisiana Legislature passed Act 516 effective June 22,

2006, amending and reenacting R.S. 46:236.1.8(D) and (E) relative to child support programs, to authorize certain support enforcement service support personnel to administer oaths, and to provide for related matters.

Amendment of this Section is necessary to ensure continued compliance with Louisiana laws.

Title 67
SOCIAL SERVICES
Part III. Office of Family Support
Subpart 4. Support Enforcement Services
Chapter 23. Single State Agency Organization
Subchapter A. Designation, Authority, Organization and Staffing

§2305. Support Enforcement Services Staff

A. Support Enforcement Services program field officers responsible for supplying services shall be designated as support enforcement regional administrators, support enforcement district managers, social service analyst supervisors, and social service analysts.

B. Support Enforcement Services program field officers shall possess full notarial powers in connection with any document required in the course of providing services to enforce support obligations owed by non custodial parents to their family and children, to locate parents, or to establish paternity and obtain family, child, and medical support orders.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 46:236.1.8. (D) and (E).

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, Division of Youth Services, LR 2:274 (September 1976), amended by the Department of Social Services, Office of Family Support, LR 34:

Family Impact Statement

What effect will this rule have on the stability of the family? Implementation of this rule may have a positive impact on family stability by fostering efforts to expedite the delivery of support enforcement services.

What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

What effect will this rule have on the functioning of the family? This rule will have no effect on the functioning of the family.

What effect will this have on family earnings and family budget? This rule will have no effect on family earnings but may have a positive effect on family budgets by fostering efforts to expedite the collection and distribution of support payments.

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.

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.

All interested persons may submit written comments by July 25, 2008, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-90656. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on Friday, July 25, 2008, at the Department of Social Services, Iberville Building, 627 North 4th Street, 1st Floor, Room 129, Baton Rouge, LA beginning at 9:00 am. 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: Support Enforcement Services Program

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

The purpose of this rule is to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Chapter 23 to clarify language regarding job titles and notarial powers of Support Enforcement Services field officers per Act 516 of the 2006 Regular Legislative Session.

This proposed rule would result in the cost of publishing rulemaking and printing policy, which is estimated to be approximately $600 ($300 State/$300 Federal). This is a one-time cost that is routinely included in the agency's budget.

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

Implementation of this rule would not result in any effect on Revenue Collections.

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.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Adren O. Wilson	Robert E. Hosse
Assistant Secretary	Staff Director
0806#054	Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services
Office of Family Support

TANF—OCS Child Welfare Programs (LAC 67:III.5549)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 15, Chapter 55, Section 5549 Office of Community Services (OCS) Child Welfare Programs.

Pursuant to Act 18 of the 2007 Regular Session of the Louisiana Legislature, the agency proposes to amend §5549 OCS Child Welfare Programs to expand Temporary Assistance for Needy Families (TANF) services by adding Component 3—Services to Parents, which are services intended to help reunite the family or determine permanency

for abused or neglected children when allegation of neglect or abuse has been validated and temporary emergency removal of a child or children has occurred. Additionally, it is necessary to clarify allowable TANF funded services and the duration that temporary out-of-home placement may be used when determined necessary for the safety of children.

Title 67
SOCIAL SERVICES
Part III. Office of Family Support
Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives
Chapter 55. TANF Initiatives
§5549. OCS Child Welfare Programs

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving needy families where one or more minor children living in the home are at risk of abuse or neglect. The methods of collaboration include:

1. *Child Protection Investigation (CPI)*—comprises services to assess the validity of a report of child abuse or neglect involving a minor child or children residing with a custodial parent, an adult caretaker relative, or a legal guardian, to determine whether an emergency exists, and when deemed necessary, to develop a safety plan which may include coordination of services, emergency removal and placement, referral to OCS Family Services or another appropriate agency, short term counseling, parenting guidance, and/or arrangements for concrete services, such as the Preventive Assistance Fund (PAF) and Reunification Assistance Fund (RAF).

2. *Family Services*—comprises services to needy families including a child or children and their parents or adult caretaker relatives, where one or more minor children living in the home are at risk of abuse or neglect, after an allegation of child neglect or abuse has been validated, to assist in preventing the removal of a child from his care giver or, where temporary emergency removal has already occurred in validated abuse and/or neglect cases, to help reunite the family by returning the child. Services are also provided to a family who requests protective services on its own when it is believed that a child in the family would be at risk of abuse or neglect. Elements of Family Services include problem identification, family assessment, risk assessment, safety planning, case planning, counseling, problem resolution, provision of or arrangements for needed services, and/or concrete aid through the Preventive Assistance Fund.

3. *Services to Parents*—comprises services to needy families, where one or more minor children living in the home are at risk of abuse or neglect, after an allegation of child neglect or abuse has been validated, and where temporary emergency removal has already occurred in validated abuse and/or neglect cases. Reasonable efforts to maintain the child or children in the home without further risk of harm will be assessed, the case will be staffed prior to removal, and an order will be obtained from the judiciary. Elements of Service to Parents are comprised of problem identification, family assessment, risk assessment, safety planning, problem resolution, provision of or arrangement for needed services, and/or concrete aid through the Preventive Assistance fund. In any temporary emergency placement, priority will be given to relatives. These services can be provided when a child is absent from the home for a period of up to 180 days.

B. These services meet TANF goal 1, to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives. The TANF grant may be used to provide services in any manner that is reasonably calculated to accomplish the purpose of the initiative.

C. - D. ...

E. Direct services which provide for basic needs, that may be provided in response to an episode of need or a specific crisis situation and are non-recurrent, such as but not limited to food, clothing, utilities, and shelter assistance, will not be provided beyond four months. Medical expenses and/or services are not eligible TANF funded services.

F. A family consists of a child or children and their parents or adult caretaker relatives within the fifth degree of relationship, where one or more minor children living in the home is at risk of abuse or neglect.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session, Act 18, 2007 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2374 (November 2002), amended LR 31:486 (February 2005), LR 32:2099 (November 2006), LR 34:695 (April 2008), LR 34:

Family Impact Statement

1. What effect will this rule have on the stability of the family? The intended effect of this Rule is to increase family stability by helping to decrease the risk of abuse and neglect of children thereby supporting TANF goal 1, to provide assistance to needy families so that children may be cared for in their own homes or in the home of a relative.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The effect this Rule will have on the authority and rights of persons regarding the education and supervision of their children is unknown at this time.

3. What effect will this have on the functioning of the family? The intention of this Rule is to improve the function of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and family budget.

5. What effect will this have on the behavior and personal responsibility of children? The effect this Rule will have on the behavior and personal responsibility of children is unknown at this time.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly an agency function.

All interested persons may submit written comments through, July 25, 2008, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-9065.

A public hearing on the proposed Rule will be held on July 25, 2008, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room I-129, Baton Rouge, Louisiana, beginning 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 Area Code 225-342-4120 (Voice and TDD).

Ann Silverberg Williamson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: TANF—OCS Child Welfare Programs

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

The purpose of this rule is to amend the Louisiana Administrative Code Title 67, Part III, Subpart 15, Chapter 55, Section 5549 to make technical language changes to clarify existing policy and to add language to include "services to needy families after an allegation of child neglect or abuse has been validated where temporary emergency removal of the child has already occurred" as a TANF eligible service. This rule will allow these existing services to be funded with TANF Block Grant Funds that have already been allocated to the Office of Community Services. These services are currently funded with State General Fund and Social Services Block Grant funds. This rule change will generate some State General Fund savings; however, the amount cannot be determined because the savings will depend on the number of families that are qualified to receive TANF eligible services. Services provided to families who are not TANF eligible will continue to be funded with State General Fund and Social Services Block Grant Funding.

The only cost associated with this rule is the cost of publishing rulemaking, which is estimated to be $600 ($300 State/$300 Federal) for FY 07/08. This is a one-time cost that is routinely included in the agency's annual budget.

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

Implementation of this rule will have no effect on state or local revenue collections.

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

Families will continue to benefit from these services that are already provided to needy families at risk of abuse and neglect.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0806#070

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Iatt Lake Fishing Closure (LAC 76:VII.114)

The Wildlife and Fisheries Commission hereby advertises its intent to create a Rule to close Iatt Lake to fishing while the lake is drawn down for vegetation control.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 1. Freshwater Sports and Commercial Fishing

§114. Iatt Lake Fishing Closure

A. Recreational and commercial fishing in Iatt Lake in Grant Parish shall be closed while the lake is in drawdown. The following provisions shall apply.

1. The area where the closure shall be in effect are the waters of Iatt Lake between the Iatt Lake spillway and Louisiana Highway 122.

2. The closure shall begin on June 9, 2008, and continue until the secretary of the department officially announces the reopening of the lake to fishing. This should occur sometime after October 6, 2008, when the lake reaches pool stage (83 feet MSL), but could occur earlier if rain events prompt the department to abandon the drawdown effort before October 6, 2008.

3. Effective with the closure, no person shall take or possess or attempt to take any species of fish while on the waters of Iatt Lake or take or possess or attempt to take any fish from the waters of Iatt Lake.

4. Throughout this closure, no person shall possess while on the waters of Iatt Lake any fishing gear capable of taking fish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56.6(25)(a), R.S. 56:325.C, and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 34:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including, but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments on the proposed Rule to Mr. Gary Tilyou, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday, August 7, 2008.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Patrick C. Morrow
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Iatt Lake Fishing Closure

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

No costs or savings to state or local governmental units are anticipated. Implementation and enforcement of the proposed rule will be carried out using existing staff and funding level.

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

The proposed action may result in a slight negative impact in revenue collections of state and local governmental units from reduced license sales and taxes collected from goods and services purchased by fishermen.

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

The temporary closure of Iatt Lake to all fishing will directly affect fishermen and surrounding landowners who participate in boating and fishing activities on the lake. They will have to shift their fishing effort to nearby water bodies which may increase fishing-related costs or temporarily stop fishing while the closure is in place. Local businesses that provide goods and services to fishermen and those that purchase seafood from Iatt Lake commercial fishermen may experience lower sales revenues from the proposed closure. The magnitude of this impact can not be estimated at this time, but it is anticipated to be short in duration.

The anticipated benefits from the Iatt Lake closure include reduced nuisance aquatic plant population and improved fishing opportunities over time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

A slight increase in competition and a decrease in employment may occur in the private sector of local economies where the closure occurs. However, the effects on competition and employment in the private sector are anticipated to be small, since nearby water bodies will be available for fishing and boating activities.

No impact on the public sector is anticipated from the proposed rule.

Wynette Kees
Fiscal Officer
0806#042

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences
Structural Pest Control Commission

Approved Termiticides and Manufacturers

The Louisiana Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, is hereby giving notice of the list of termiticides and manufacturers, approved by the Structural Pest Control Commission, for use in Louisiana.

Approved Termiticides and Manufacturers

Product	Percentage	Manufacturer
AggresZor 75 WSP (Imidacloprid)	0.05% - 0.10%	Speckoz
Baseline (Bifenthrin)	0.06% - 0.12%	FMC
Bifen XTS (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifen IT (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifen PT (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifenthrin Pro Multi-Insecticide (Bifenthrin)	0.06% - 0.12%	BASF
Bifenthrin TC (Bifenthrin)	0.06% - 0.12%	Control Solutions
Bifenthrin Termiticide / Insecticide (Bifenthrin)	0.06% - 0.12%	Speckoz
Biflex TC (Bifenthrin)	0.06% - 0.12%	FMC
Bora-Care (Disodium Octaborate Tetrahydrate)	23%	Nisus
BOR-RAM (Disodium Octaborate Tetrahydrate)	23%	Sostram Corp.
Centerfire 75 WSP (Imidacloprid)	0.05% - 0.10%	Bayer
Cyper TC (Cypermethrin)	0.25% - 1.00%	Control Solutions
Cypermethrin G-Pro (Cypermethrin)	0.25% - 1.0%	GRO-PRO
Demon (Cypermethrin)	0.25% - 1.00%	Zeneca
Demon MAX (Cypermethrin)	0.25% - 1.00%	Syngenta
Dominion 2L (Imidacloprid)	0.05% - 0.10%	Control Solutions
Dominion 75 WSP (Imidacloprid)	0.05% - 0.10%	Control Solutions
Dragnet FT (Permethrin)	0.50% - 2.00%	FMC
Dragnet SFR (Permethrin)	0.50% - 2.00%	FMC
Imida E-Pro 2F (Imidacloprid)	0.05% - 0.10%	Etigra
Imida E-Pro 75 WSP (Imidacloprid	0.05% - 0.10%	Etigra
Impasse Termite System (Lambda-cyhalothrin)		Syngenta
Impasse Termite Blocker (Lambda-cyhalothrin)		Syngenta
MasterLine (Bifenthrin)	0.06% - 0.12%	Univar
MasterLine I Maxx Pro WSP (Imidacloprid)	0.05% - 0.10%	Bayer
MasterLine I Maxx Pro 2F (Imidacloprid)	0.05% - 0.10%	Bayer
Maxxthor SC (Bifenthrin)	0.06% - 0.12%	Ensystex
Permaster 380 (Permethrin)	0.50% - 2.00%	LG Chemical
Permethrin SFR (Permethrin)	0.50% - 2.00%	Control Solutions
Permethrin TC (Permethrin)	0.50% - 2.00%	Micro-Flo
Phantom (Chlorfenapyr)	0.063% - 0.25%	BASF
Prelude (Torpedo)(Permethrin)	0.50% - 2.00%	AMVAC
Premise 75 WSP(Imidacloprid)	0.05% - 0.10%	Bayer
Premise 0.5SC (Imidacloprid)	0.05% - 0.10%	Bayer
Premise II (Imidacloprid)	0.05% - 0.10%	Bayer
Premise Pre-construction (Imidacloprid)	0.05% - 0.10%	Bayer
**Premise Gel (Imidacloprid)	0.001%	Bayer
Premise Pro (Imidacloprid)	0.05% - 0.10%	Bayer
Prevail (Cypermethrin)	0.25% - 1.00%	FMC
Prevail TC (Cypermethrin)	0.30% - 0.60%	FMC
Prevail FT (Cypermethrin)	0.25% - 1.00%	FMC
Prevail Pretreat (Cypermethrin)	0.25% - 1.00%	FMC
Pro-Build TC (Cypermethrin)	0.25% - 1.0%	Syngenta
Prothor WP (Imidacloprid)	0.05% - 0.10%	Ensystex III
Prothor WSP (Imidacloprid)	0.05% - 0.10%	Ensystex III
Talstar P (Bifenthrin)	0.06% - 0.12%	FMC
Talstar Pretreat (Bifenthrin)	0.06% - 0.12%	FMC
Talstar (Bifenthrin)	0.06% - 0.12%	FMC
Talstar One Multi—Insecticide (Bifenthrin)	0.06% - 0.12%	FMC
Tengard SFR (Permethrin)	0.50% - 2.00%	United Phosphorus
Termidor (Fipronil)	0.06% - 0.125%	BASF
Termidor 80WG (Fipronil)	0.06% - 0.125%	BASF
Termidor SC (Fipronil)	0.06% - 0.125%	BASF
Transport (Acetamiprid)(Bifenthrin)	0.11%	FMC
ValueLine Bifenthrin TC (Bifenthrin)	0.06% - 0.12%	FMC
Wisdom TC Flowable (Bifenthrin)	0.06% - 0.12%	AMVAC

Baits (Not in Pilot Program)	
Advance Compressed Termite Bait (Diflubenzuron)	Whitmire Micro-Gen
Advance Compressed Termite Bait II (Diflubenzuron)	Whitmire Micro-Gen
FirstLine GTX Termite Bait Station (Sulflurimid)	FMC
FirstLine GT Termite Bait Station (Sulflurimid)	FMC
FirstLine Termite Bait Station (Sulflurimid)	FMC
FirstLine GT Plus (Sulflurimid)	FMC
Isopthor Termite Bait (Diflubenzuron)	Ensystex
Labyrinth (Diflubenzuron)	Ensystex
Labyrinth AC (Diflubenzuron)	Ensystex
Recruit II (Hexaflumuron)	Dow Agro Sciences
Recruit II AG (Hexaflumuron)	Dow Agro Sciences
Recruit III (Noviflumuron)	Dow Agro Sciences
Recruit III AG (Noviflumuron)	Dow Agro Sciences
Recruit IV (Noviflumoron)	Dow Agro Sciences
Recruit IV AG (Noviflumuron)	Dow Agro Sciences
Shatter (Hexaflumuron)	Dow Agro Sciences
T-Max (Noviflumuron)	Dow Agro Sciences/ Terminix International
T-Max AG (Noviflumuron)	Dow Agro Sciences/ Terminix International
T-Max II (Diflubenzuron)	Whitmire Micro-Gen/ Terminix International

Mike Strain
Commissioner

0806#031

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of Rulemaking and Solicitation of Comments on Centralized Waste Treatment Facilities Also Treating Exploration and Production Waste—Log #MM003 (LAC 33:IX.101, 701, 703, 708, 715, 1701, 1703, 1705, 1707, 1709, 1711, 1799, 1901, 2313, 2501, 2903, 6509, 6701, 6703, 6705, 6707, 6709, 7305, 7307, and 7395; and XV.1404) (0806Pot2)

The Louisiana Department of Environmental Quality is requesting comments on the draft proposed regulations regarding centralized waste treatment facilities also treating exploration and production waste, LAC 33:IX.101, 701, 703, 708, 715, 1701, 1703, 1705, 1707, 1709, 1711, 1799, 1901, 2313, 2501, 2903, 6509, 6701, 6703, 6705, 6707, 6709, 7305, 7307, and 7395; and XV.1404 (MM003).

The provisions of this draft Rule are applicable to discharges of wastewater by centralized waste treatment facilities (CWTs) that also treat oil and gas exploration and production (E&P) waste. The draft rule adds standards for these facilities, establishes financial assurance requirements for CWTs, and eliminates language that is no longer necessary due to the new CWT provisions. The existing financial assurance requirements for privately-owned sewage treatment facilities regulated by the Public Service Commission formerly in LAC 33:IX.Chapter 67 have been moved to Chapter 17. The existing financial assurance requirements for sewage sludge and biosolids formerly in LAC 33:IX.7307 and 7395 have been combined with the CWT financial assurance requirements and moved to Chapter 17. Portions of the oil E&P regulations formerly in LAC 33:IX.Chapter 17 have been added to LAC 33:IX.708. The department requests comments on the technical content of the proposed Rule. The department also requests comments on the estimated cost of this proposed Rule to the public and other interested parties who could be affected by this Rule, for the purpose of preparing a Fiscal and Economic Impact Statement as required by law.

Written comments concerning the draft Rule are due no later than 4:30 p.m., July 31, 2008, and should be submitted to Sharon Parker, 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 sharon.parker@la.gov. Persons commenting should reference this document as MM003. Copies of the draft Rule 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 MM003. This draft Rule is available on the Internet at

http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx

The draft Rule 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.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 1. Water Pollution Control

Chapter 1. General Provisions

§101. Scope and Purpose

A. These regulations establish requirements and procedures for permitting, enforcement, monitoring, and surveillance, and spill control activities of the Department of Environmental Quality.

B. LAC 33:IX.Chapters 1 and 3 shall not apply to any facility or discharge that is within the scope of coverage of the Louisiana Pollutant Discharge Elimination System (LPDES) program.

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), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 7. Effluent Standards

§701. Purpose

A. The purpose of this Chapter is to establish a list of categories and classes of discharges for which effluent limitations, standards of performance, pretreatment standards, standards for toxic substances, and other standards have been or are to be established; and to set forth general terms for the application of such limitations and standards to the control of wastewater discharges through the Louisiana Pollutant Discharge Elimination System (LPDES).

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 the Secretary, Legal Affairs Division, LR 34:

§703. Scope

A. The following categories and classes of discharges are covered by this Chapter.

Sand and Gravel Extraction	LAC 33:IX.705
Sugar Processing	LAC 33:IX.707
Exploration for and Production of Oil and Natural Gas	LAC 33:IX.708
Miscellaneous Small Dischargers	LAC 33:IX.709
Secondary Treatment for Sanitary Sewage	LAC 33:IX.711
Chlorine-Bleaching Pulp and Paper Mill Dischargers	LAC 33:IX.713
Centralized Waste Treatment Facilities also Treating Exploration and Production Waste	LAC 33:IX.715

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 LR 17:965 (October 1991), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

§708. Exploration for and Production of Oil and Natural Gas

A. …

B. Definitions. The following definitions apply to terms used in this Chapter. Definitions of other terms and meanings of abbreviations are set forth in LAC 33:IX.107 and 1105.

Average Monthly Discharge Limitation—Repealed.

Ballast Water—Repealed.

Bilge Water—Repealed.

Blow-Out Preventer (BOP) Control Fluid—Repealed.

* * *

Brackish Marshes—those areas that are inundated or saturated by surface water or groundwater of moderate salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, brackish emergent vegetation. Typical vegetation includes bulltongue (*Sagittaria* spp.), wild millet (*Echinochloa walteri*), bullwhip (*Scirpus califomicus*), sawgrass (*Cladium jamaicense*), wiregrass *(Spartina patens)*, three-cornered grass *(Scirpus olneyi)*, and widgeongrass *(Ruppia maritima)*. *Brackish marshes* are also characterized by interstitial water salinity that normally ranges between 3 and 15 parts per thousand (ppt) or practical salinity units (psu).

* * *

Centralized Waste Treatment Facility (CWT)—a facility defined in EPA's Effluent Guidelines and Standards, 40 CFR Subchapter N, §437.2 (Centralized Waste Treatment Point Source Category), incorporated by reference in LAC 33:IX.4903.

* * *

Daily Discharge—Repealed.

* * *

Deck Drainage—Repealed.

Desalinization Unit Discharge—Repealed.

* * *

Exploration and Production Waste (E&P Waste)—drilling wastes, salt water, and other wastes associated with the exploration, development, or production of crude oil or natural gas wells, which are not regulated by the provisions of, and therefore are exempt from, the Louisiana Hazardous Waste Regulations and the Federal Resource Conservation and Recovery Act, as amended.

* * *

Fire Control System Test Water—Repealed.

Freshwater Emergent Wetlands (including *Freshwater Marshes*)—those areas inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, freshwater emergent vegetation. Typical vegetation includes cattail (*Typha angustifolia*), bulltongue (*Sagittaria* spp.), maiden cane (*Panicum hemitomon*), water hyacinth (*Eichomia crassipes*), pickerelweed (*Ponterderia cordata*), alligatorweed (*Altemanthera philoxeroides*), and *Hydrocotyl* spp. *Freshwater emergent wetlands* also are characterized by interstitial water salinity that is normally less than 2 ppt or psu. There are two subtypes of *freshwater emergent wetlands*: floating and attached. Floating wetlands are those areas where the wetland surface substrate is detached and is floating above the underlying deltaic plain (also called "buoyant" and "flotant"). Attached wetlands are those areas where the vegetation is attached to the wetland surface and is contiguous with the underlying wetland substrate and can be submerged or emergent.

Freshwater Swamps and Marshes—Repealed.

Intermediate Marshes—Repealed.

Louisiana Pollutant Discharge Elimination System (LPDES)—the state-delegated program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and for imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA.

Native Mud Drilling Fluids—Repealed.

* * *

Produced Sand—Repealed.

* * *

Saline Marshes—Repealed.

Salt (Saline) Marshes—those wetland areas that are inundated or saturated by surface water or groundwater of salinity characteristic of nearshore Gulf of Mexico ambient water at a frequency and duration sufficient to support, and that under normal circumstances do support, saline emergent vegetation characterized by a prevalence of species typically adapted for life in these soil and contiguous surface water conditions. Typical vegetation includes oystergrass *(Spartina alterniflora)*, glasswort *(Salicornia spp.)*, black rush *(Juncus roemerianus)*, saltwort (*Batis maritime*), black mangrove *(Avicennia nitida)*, and saltgrass *(Distichlis spicata)*. Interstitial water salinity normally exceeds 16 ppt or psu.

* * *

Source Water and Sand—Repealed.

* * *

Well Completion Fluid—Repealed.

Well Treatment Fluid—Repealed.

Wetlands—those areas that have one or more of the following attributes: support hydrophytic (water tolerant) vegetation during most of the year; contain predominately undrained hydric (water saturated) soils; and/or are periodically inundated or saturated by surface water or groundwater.

* * *

C. - C.1.a. …

b. No oily fluids shall be discharged to, or allowed to flow onto, the ground, or be carried from the original lease in open ditches, or be discharged or allowed to flow into any stream, lake, or other body of water.

c. A Spill Prevention and Control Plan shall be prepared and implemented in accordance with the provisions specified in LAC 33:IX.901-907. This plan shall establish a program for regular inspection of all storage tanks, separators, and related production and transfer equipment. The plan shall also include provisions for, at a minimum, annual monitoring of flow line integrity through a combination of visual inspection and pressure testing or through the use of an approved alternate methodology. Inspection and test records shall be maintained for a minimum of three years. The plan shall also establish provisions for ready access to, and rapid deployment of, containment booms and ancillary spill containment and cleanup equipment. Discharges shall be controlled through the following measures.

i. All workover and drilling barges, and production facilities shall be equipped with pollution containment devices that under normal operating conditions prevent unauthorized discharges.

ii. All storage tanks, separators, and related production and transfer equipment to be located in open water or wetland areas, where building dikes is impossible or impracticable, shall be installed on impervious decking provided with a system of curbs, gutters, and/or sumps

capable of retaining spills of oil, produced water, or any other product or waste material.

iii. All drains from diked areas shall be equipped with valves that are kept in the closed position except during periods of supervised discharge.

iv. On all pumping wells, over water or marsh, there shall be installed an adequate impervious deck or other device with a catch tank installed around the wellhead. The catch tank should be equipped with a "stiff-leg" to enable the operator to dispose of excess rainfall.

v. Each permanent oil tank or battery of tanks that are located within the corporate limits of any city, town, or village, or where such a tank is closer than 500 feet to any highway or inhabited dwelling or closer than 1,000 feet to any school or church, or where such a tank is so located as to be deemed a hazard by the administrative authority, shall be surrounded by a dike (or fire wall) or retaining wall consistent with LAC 33:IX.Chapter 9. At the discretion of the administrative authority, fire walls of 100 percent capacity can be required where other conditions or circumstances warrant their construction.

vi. Oil gathering lines, or any other lines used for transporting oil, shall be regularly inspected and all leaks shall be immediately repaired. All barges used for the transportation of crude oil or petroleum products shall be in proper operational condition. Leaking barges shall be repaired before reuse. Loading racks, barge-loading outlets, and similar installations shall be operated at all times with full precaution against spillage. Such installations shall be surrounded by a ditch graded to a gathering sump, or shall be provided with an impervious deck surrounded by a steel gutter leading to a sump, or with such other equipment as is adequate for the accomplishment of the purpose of spill prevention consistent with LAC 33:IX.Chapter 9. All such gathering sumps shall be cleared regularly by removal or other safe disposal of the oily waste. After each operation of barge or tanker loading equipment, loading hoses and connections shall be carefully drained, and the gathering sumps shall be emptied.

vii. In the event of an unauthorized discharge of oil, produced water, or any other product or waste material, a remedial response must be immediately initiated and the Office of Environmental Compliance shall be notified in accordance with LAC 33:I.Chapter 39. The remedial response shall include immediate removal of discharged materials and, to the extent practicable, decontamination of any water, soil, sediment, or vegetation adversely impacted by the unauthorized discharge. If immediate cleanup is not considered to be an appropriate remedial measure, the responsible party shall notify the Office of Environmental Compliance of the alternative remedial plan and shall promptly implement said plan upon approval by the department. Submission of an alternate plan shall in no way relieve the responsible party of its duty to contain and mitigate the effects of the discharge.

viii. Use of detergents, emulsifiers, or dispersants to clean up spilled oil is prohibited unless the use has been specifically approved by the department or is necessary to maintain a safe work environment (i.e., minimization of the potential for personnel injury due to slipping hazards). In all such cases, initial cleanup shall be done by physical removal. Detergents, emulsifiers, or dispersants shall not be employed to sink, obscure, or camouflage spilled materials or to in any way hinder observation of a spill event.

ix. At least 2 feet of freeboard shall be maintained in all earthen pits at all times.

2. Produced Water

a. There shall be no discharge of produced water within the boundaries of any state or federal wildlife management area, refuge, park, or scenic stream or into any water body determined by the department to be of special ecological significance.

b. Produced water shall not be discharged within 1,300 feet (via water) of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed. No produced water shall be discharged in a manner that, at any time, facilitates the incorporation of significant quantities of hydrocarbons or radionuclides into sediment or biota.

c. The discharge of produced water directly onto any vegetated area, soil, or intermittently-exposed sediment surface is prohibited.

3. Drill Cuttings and Drilling Fluids

a. Drilling fluids or drill cuttings shall not be discharged within the boundaries of state or federal wildlife management areas, refuges, parks, or scenic streams or into any water body determined by the department to be of special ecological significance.

b. The discharge of drill cuttings or bulk drilling fluids (if allowed) must not occur within 1,300 feet (via water) of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed. No discharge shall be made in such a manner as to allow deposition of drill cuttings or drilling fluids in or upon any active oyster lease, live natural reef, or seed bed. If the discharge is to take place within 1 mile of an area containing oyster leases, a lease map must be forwarded to the Office of Environmental Services showing the location of the discharge and surrounding leases. If the applicant considers any oyster lease, live natural oyster or other molluscan reef, or designated seed bed within 1,300 feet of a discharge of drilling fluids or drill cuttings to be inactive, written documentation and evidence must be submitted to the Office of Environmental Services for a determination to be made as to the acceptability of such a discharge.

4. Stormwater Runoff

a. There shall be no discharge of free oil or other oily materials from any facility as evidenced by a visible sheen or residual oil deposits or stains in the drainage area downstream of the discharge point.

b. Stormwater runoff shall not exceed 100 mg/L chemical oxygen demand, 50 mg/L total organic carbon, or 15 mg/L oil and grease.

c. Maximum chloride concentration of the discharge shall not exceed two times the ambient concentration of the receiving water in brackish marsh areas and shall not exceed 500 mg/L in freshwater or intermediate marsh areas and upland areas.

d. The discharge of stormwater runoff from diked areas employed for the purpose of secondary containment shall be allowed provided the discharge is generated from areas that have not been contaminated by accidental spills or by the discharge of waste materials.

5. Drilling Fluid Reserve Pit and Production Pit Closure. This discharge category includes the discharge of treated wastewater from drilling site reserve pits, ring levee borrow ditches, shale barges, drilling fluid dewatering systems, and abandoned or inactive oil field production pits that contain only nonhazardous oil field wastes. Discharges from any pit receiving oil field waste after December 15, 1996, are prohibited. The treatment and discharge of water from off-site oil field waste disposal pits or pits containing waste other than nonhazardous oil field wastes are prohibited.

a. Discharge of treated wastewater must be specifically identified in a valid LPDES permit.

b. - f. …

6. Oil and Gas Exploration and Production Service Companies

a. Wash water from cleaning the interior of equipment, tanks, vessels, etc., which contains substances and waste material associated with the oil and gas exploration and production industry, may be discharged in accordance with an LPDES permit at the service company's place of business (or treatment facility) provided the heels have been drained from the equipment, tanks, vessels, etc.

b. The heels must not be discharged and must be disposed of in accordance with state and federal regulations or at a centralized waste treatment facility.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:261 (April 1989), amended LR 17:263 (March 1991), LR 23:860 (July 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2544 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2506 (October 2005), LR 33:2162 (October 2007), LR 34:

§715. Centralized Waste Treatment Facilities (CWTs) also Treating E&P Waste

A. Applicability. The provisions of this Section are applicable to discharges of wastewater by centralized waste treatment facilities that also treat oil and gas exploration and production waste.

B. Any discharge to waters of the state from a CWT must be in accordance with an LPDES permit and other applicable state and federal regulations.

C. In addition to the parameters listed in the CWT Effluent Guidelines, incorporated by reference in LAC 33:IX.4903, additional parameters will be limited and monitored in the LPDES permit.

1. The chloride concentration shall not exceed 500 mg/L and shall meet this standard without dilution during the treatment process. (If the discharge is in a saline or brackish area, the discharge shall not exceed 500 mg/L, or two times the ambient chloride concentration. Monitoring in the ambient water body will be required outside the zone of influence of the effluent.)

2. The following radionuclides shall not exceed the indicated levels:

a. total radium 226 and radium 228 (combined), 60 pCi/L; and

b. uranium, 300 pCi/L.

D. Radiation Survey. In accordance with LAC 33:XV.1407, a confirmatory radiation survey shall be performed and a report submitted to the Office of Environmental Compliance. This survey shall be performed quarterly. If a survey shows the presence of naturally occurring radioactive material (NORM) in excess of exempt levels provided in LAC 33:XV.1404, the Office of Environmental Compliance shall be notified for additional requirements. Surveys and monitoring shall comply with LAC 33:XV.430.A-B. Water samples shall be analyzed to determine compliance with LAC 33:XV.499, Appendix B.

E. Existing facilities seeking to accept E&P waste shall request a permit modification to do so within 90 days of promulgation of these regulations, [date to be inserted].

F. Closure Requirements. Closure ensures protection of the public and environment against leakage of potentially hazardous constituents once the facility ceases operations. Therefore, closure of the facility by the permit holder must:

1. minimize the need for further maintenance;

2. control, minimize, or eliminate, to the extent necessary to prevent threats to human health and the environment, post-closure escape of waste constituents or waste decomposition products to the groundwater, surface water, atmosphere, and soil; and

3. comply with all other closure requirements of this Section including Paragraph N.2 of this Section (i.e., written release regarding NORM contamination).

G. Closure Standard. In order to satisfy the closure requirements of Subsection F of this Section the permit holder must utilize the Risk Evaluation/Corrective Action Program (RECAP) standards in accordance with LAC 33:I.Chapter 13 to the fullest extent possible. Any residual contamination must meet the RECAP standards approved by the administrative authority, including any residual contamination in the underlying and surrounding soils and/or groundwater. Otherwise, Subsection P of this Section requires the permit holder to enter into a cooperative agreement with the administrative authority to perform corrective action (i.e., additional closure activities including site investigation, remedial investigation, a corrective action study, and/or remedial action).

H. Proper Waste Management. Wastewater and other waste (e.g., sludge, oil, and other residues) must be managed, treated, transported, and disposed of under the applicable regulations of LAC 33:V, VII, IX, and/or XV. Any contaminated containment system components, equipment, structures, and soils remaining at the time of closure must be properly disposed of or decontaminated, unless otherwise allowed for in LAC 33:V, VII, IX, and/or XV. The permit holder may become a generator of hazardous waste and must manage that waste in accordance with all applicable requirements of LAC 33:V.Chapter 11. (Facilities that receive listed hazardous waste defined in LAC 33:V.4901 must manage all waste derived from the listed waste in accordance with LAC 33:V, unless the facility has received a nonhazardous environmental medium (NHEM) determination in accordance with LAC 33:V.106.)

I. Closure Cost Estimate. Subsection J of this Section requires the permit holder to provide financial assurance for closure of the facility. Accordingly, the permit holder must submit to the administrative authority for approval a closure cost estimate. The cost estimate shall be submitted under separate cover from the closure plan required in Subsection K of this Section and be approved by the administrative authority as part of the permit issuance process.

1. The cost estimate must be detailed and itemize the costs of closure of the facility, based on hiring a third party (i.e., an entity who is neither a parent nor a subsidiary of the owner or operator) at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive (i.e., maximum inventories; assuming all contents will require offsite disposal as a hazardous waste; and no salvage value from the sale of wastes, structures, equipment, land, or other associated assets).

2. The cost estimate must be revised during closure to include corrective action pursuant to Subsection P of this Section, when deemed necessary by the administrative authority.

J. Financial Assurance. The permit holder must submit to the administrative authority for approval a financial assurance mechanism drafted in accordance with LAC 33:IX.Chapter 17 to cover the cost estimate developed under Subsection I of this Section. The financial assurance mechanism shall be submitted with the application under separate cover and be approved by the administrative authority as part of the permit issuance process. The financial assurance mechanism must be approved by the administrative authority prior to the permit holder's operating the facility (i.e., receipt and treatment of any wastewater).

K. Closure Plan. The permit holder must submit to the administrative authority for approval a closure plan addressing all activities and requirements associated with the closure of the facility. The closure plan shall be submitted with the application under separate cover and be approved by the administrative authority as part of the permit issuance process. The closure plan shall include the following, at a minimum:

1. the anticipated date of final closure;

2. a schedule of closure activities;

3. information regarding the wastewater and other waste processed at the facility. This must include the entire operating history and shall be used to determine the chemical constituents and parameters that will be used to verify closure in accordance with Paragraph K.4 of this Section, and how the wastewater and other waste will be managed at the time of closure in accordance with Paragraph K.6 of this Section. The following shall be included:

a. a detailed description of the types, sources, and categories of wastewater received and treated at the facility and waste generated and shipped offsite by the facility (e.g., hazardous [characteristic, listed], non-hazardous, NORM, E&P, etc.; sludge, wastewater, oil, etc.); and

b. a detailed description of the waste characterization methodology (i.e., sampling and analytical procedures) that will be utilized to classify the waste as hazardous or non-hazardous (including a plan view of the facility, number of samples, sample types, sampling locations, analytical procedures, and sampling quality-assurance/quality-control programs);

4. selection of the chemical constituents and parameters to be sampled that are intrinsic to the wastewater that entered the facility, in order to verify closure. (Full justification regarding parameters selected shall be provided.);

5. a detailed description of each unit (including an estimate of the maximum inventory of wastewater and other waste ever to be on-site at any given time) at the facility and how each unit will be closed;

6. a detailed description of the procedures for removing, transporting, treating, storing, or disposing of all wastewater and other waste, and identification of the type(s) of off-site treatment, storage, and/or disposal units to be used, if applicable;

7. a detailed description of the procedures for disposing or decontaminating all contaminated containment system components, equipment, and structures. This shall include the criteria for determining the extent of decontamination required to satisfy the closure performance standard, including:

a. documentation regarding the sampling and analytical methods used (including a plan view of the facility, number of samples, sample types, sampling locations, analytical procedures, and sampling quality-assurance/quality-control programs); and

b. a discussion comparing the samples to the applicable RECAP standards; and

8. a detailed description of the procedures and requirements for verifying that the underlying and surrounding soils have not been contaminated due to the operation of the facility. (If it deems it necessary to do so, the administrative authority may require verification that the underlying and surrounding groundwater has not been impacted.) At a minimum, the following shall be included:

a. a discussion of records to be reviewed at the time of closure (e.g., spill reports, housekeeping practices, etc.);

b. documentation regarding the sampling and analytical methods used (including a plan view of the facility, number of samples, sample types, sampling locations, analytical procedures, and sampling quality-assurance/quality-control programs); and

c. a discussion comparing the samples to the applicable RECAP standards.

L. Maintenance of the Closure Plan. Until final closure is completed and certified in accordance with Subsection N of this Section, a copy of the approved plan and all approved revisions shall be maintained at the facility by the permit holder and furnished to the administrative authority upon request. As necessary, the permit holder must submit to the administrative authority for approval a written request for revisions to the closure plan. Such a request shall include a copy of the amended closure plan and be submitted at least 60 days prior to the proposed change in facility design or operation, or no later than 30 days after an unexpected event has occurred. Revisions must be requested whenever:

1. changes in operating plans or facility design are planned;

2. changes in the expected year of closure, if applicable, are made;

3. in conducting closure activities, unexpected events occur; or

4. the administrative authority requests revisions to the plan.

M. Notification of Intent to Close. At least 90 days before closure of the facility, the permit holder shall notify the Office of Environmental Services in writing of the intent to

close the facility. The following information shall be provided:

1. the date of the planned closure;

2. changes, if any, requested in the approved closure plan and cost estimate (Changes must be approved by the administrative authority prior to implementation.); and

3. the closure schedule.

N. Closure Certification. Ninety days after the completion of closure, the permit holder must submit a closure certification report describing the completion of the closure activities in accordance with the approved closure plan. The certification must be signed by the permit holder and by an independent registered professional engineer.

1. The closure certification report must fully demonstrate that the closure meets the requirements and standard of Subsections F and G of this Section.

2. The closure certification report must contain a written release from the Office of Environmental Compliance indicating that all NORM contamination has been fully addressed in accordance with LAC 33:XV.

3. The closure certification report must contain a copy of the document that will be filed upon closure of the facility with the official parish recordkeeper indicating the location of the property and its usage for treatment of wastewater, unless the closure plan specifies a clean closure.

4. Any deviations from the closure plan must be documented in the closure certification report.

5. If the closure certification report adequately addresses Paragraphs N.1 and 2 of this Section and has been approved by the administrative authority, the permit holder shall submit a request to the administrative authority for the release of the closure financial assurance mechanism. The closure financial assurance mechanism will then be released to the permit holder or financial institution.

O. Closure Deadlines

1. Closure deadlines are as follows.

a. The permit holder must begin closure within 30 days after the date on which the facility receives the known final volume of wastewater, or if there is a reasonable possibility that the facility will receive additional wastewater, no later than one year after the date on which the unit received the most recent volume of wastewater.

b. The permit holder must treat or remove from the facility all wastewater and other waste in accordance with the approved closure plan, within 90 days after receiving the final volume of wastewater.

c. The permit holder must complete all closure activities (except corrective action specified in Subsection P of this Section) in accordance with the approved closure plan within 180 days after receiving the final volume of wastewater at the facility.

2. The administrative authority may approve longer periods if the permit holder has taken and continues to take all steps to prevent threats to human health and the environment, and:

a. the permit holder demonstrates that the activities required to comply with this Subsection will, of necessity, take longer than specified to complete; or

b. the facility has the capacity to receive additional wastewater; and

c. there is a reasonable likelihood that the facility will recommence operation; and

d. closure of the facility would be incompatible with continued operation of the site.

P. Corrective Action (Additional Closure Activities). If levels of contamination in the underlying and surrounding soils and/or groundwater at the time of closure exceed the approved RECAP standards as specified in Subsection G of this Section, the permit holder shall enter into a cooperative agreement with the administrative authority as provided in LAC 33:VI.703 to perform corrective action (i.e., additional closure activities including site investigation, remedial investigation, corrective action study, and/or remedial action), as the administrative authority may deem necessary, in accordance with LAC 33:VI.

1. Financial assurance for closure in accordance with Subsection J of this Section shall be maintained by the permit holder until the cooperative agreement is effective.

2. As provided for in LAC 33:VI.703.E.5, the cooperative agreement may contain a provision for "assurance of financial ability to complete work" by the permit holder. Accordingly, the administrative authority shall evaluate whether financial assurance will be required for corrective action.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 17. Financial Assurance

NOTE: Former Chapter 17 has been repealed.

§1701. Financial Assurance Requirements

NOTE: Former §1701 has been repealed.

A. Purpose and Applicability. The purpose of this Chapter is to establish the financial assurance (the word *security* may be used interchangeably with *assurance*) requirements for:

1. privately-owned sewage treatment facilities regulated by the Public Service Commission during operation;

2. centralized waste treatment facilities (CWTs) treating exploration and production (E&P) waste during operation and closure;

3. commercial preparers of sewage sludge, for meeting the requirements applicable during operation and closure; and

4. commercial land appliers of biosolids during operation and closure.

B. This Chapter shall be applicable to the entities listed in Subsection A of this Section when the following actions are taken by the department:

1. issuance of a new discharge permit;

2. renewal of an existing discharge permit;

3. modification of an existing discharge permit; and

4. transfer of an existing discharge permit to a different permittee.

C. Without first obtaining financial security pursuant to LAC 33:IX.1705, no privately-owned sewage treatment facility regulated by the Public Service Commission shall be issued an LPDES permit.

D. All instruments used in this Chapter shall be submitted in the following manner.

1. The instrument shall be addressed to the Office of Environmental Services.

2. The original instrument shall be submitted.

3. The instrument shall be accompanied with a cover letter identifying the facility, agency interest number, and any other identifying information deemed necessary by the administrative authority.

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 34:

§1703. Definitions

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

Closure—the act of securing a facility that has been used to process, store, or dispose of waste from the affected entities in a manner that minimizes harm to the public and the environment.

Commercial Land Applier of Biosolids—any person who applies biosolids to the land for monetary profit or other financial consideration when the biosolids have been obtained from a facility or facilities not owned by or associated with the person.

Commercial Preparer of Sewage Sludge—any person who prepares sewage sludge or a material derived from sewage sludge for monetary profit or other financial consideration when the person was not the generator of the sewage sludge and the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

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 34:

§1705. Financial Assurance for Privately-Owned Sewage Treatment Facilities

A. Amount of Financial Security Required for Privately-Owned Sewage Treatment Facilities Regulated by the Public Service Commission. Privately owned sewage treatment facilities must provide financial assurance as follows.

1. The amount of the financial security must be equal to or greater than $1 per gallon of wastewater discharged per day from the facility, as determined by the administrative authority, up to a maximum of $25,000.

2. The secretary may, at his discretion, allow a single financial security instrument to satisfy the requirements of this Chapter for up to four permits held by the same permittee, if the amount of financial security provided by that instrument is large enough to satisfy the requirements of Paragraph A.1 of this Section for the facility with the greatest amount of wastewater discharged per day.

B. Acceptable Form of Financial Security. Financial security required by R.S. 30:2075.2 may be established by a surety bond and/or a letter of credit, in combination with a standby trust fund, as provided in Paragraphs B.1-3 of this Section. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority.

1. Surety Bond. The requirements of this Section may be satisfied by obtaining a surety bond that conforms to all of the following requirements.

a. The bond must be executed by the permittee and a corporate surety licensed to do business in Louisiana. The surety must, at a minimum, be among those listed as acceptable sureties on federal bonds in the most current version of Circular 570 of the U.S. Department of the Treasury and be approved by the administrative authority.

b. The bond must be submitted to the Louisiana Department of Environmental Quality, Office of Environmental Services.

c. 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.

d. 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 Louisiana Department of Environmental Quality, 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 receive the notice of cancellation, as evidenced by the return receipts.

e. A standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the surety bond, into which the proceeds of the surety bond could be transferred should such funds be necessary for continued operation of the facility, and a signed copy of the standby trust agreement must be furnished to the administrative authority with the surety bond. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1705.B.3.

f. The wording of the surety bond must be identical to the following, except that material in brackets is to be replaced with the relevant information, and the brackets deleted.

FINANCIAL GUARANTEE BOND

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
Agency Identification Number, name, address, and amounts for operation and maintenance and/or correction of deficiencies for each facility guaranteed by this bond [indicate operation and maintenance amounts and/or correction of deficiency amounts separately]: _____
Total penal sum of bond: $_____
Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) 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 the Surety(ies) are corporations acting as co-sureties, 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., to have a permit in order to own or operate the facility(ies) identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for correction of deficiencies at the facility and/or for maintenance and operation of the facility, as a condition of the permit or interim status; and

WHEREAS, said Principal shall establish a standby trust fund, as is required by LAC 33:IX.1705.B.1.e, 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, as directed by the administrative authority, 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 the Secretary, or a court of competent jurisdiction, finds that the facility is in forfeiture of financial security due to noncompliance,

The Surety(ies) 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(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the administrative authority.

The Surety(ies) hereby waives notification of amendments to 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(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(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of notice of cancellation by the Principal and the administrative authority, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) and to the administrative authority, provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the administrative authority.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.1705.A, and the conditions of the permit so that it guarantees a new amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety(ies) 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(ies), 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.1705.B.1.f as such regulations were constituted 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: $_____

2. Letter of Credit. The requirements of this Section may be satisfied by obtaining a letter of credit that conforms to the following requirements.

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. The letter of credit must be submitted to the Louisiana Department of Environmental Quality, Office of Environmental Services.

c. 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 administrative authority have received the notice, as evidenced by the return receipts.

d. A standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the letter of credit, into which the proceeds of the letter of credit could be transferred should such funds be necessary for continued operation of the facility, and a signed copy of the standby trust agreement must be furnished to the administrative authority with the letter of credit. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.1705.B.3.

e. The wording of the letter of credit shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Office of Environmental Services
[insert appropriate division name]
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
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 conditions specified in LAC 33:IX.1705 for its [list site identification 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:

(1). A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(2). A statement, signed by the administrative authority, declaring that the amount of the draft is payable 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 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.1705.B.2.e, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]

[date]

3. Standby Trust Fund. The wording of the standby trust agreement that is required by Subparagraphs B.1.e and B.2.d of this Section shall be as follows, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

PRIVATELY-OWNED SEWAGE TREATMENT FACILITY STANDBY TRUST AGREEMENT

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

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the Grantor, requiring that an affected person shall provide assurance that funds will be available when needed for operation and maintenance of the facility or to correct deficiencies at 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 affected person 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 amounts for operation and maintenance and/or correction of deficiencies, 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 standby 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 CONTINUED OPERATION

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 correcting deficiencies at the facility or of the costs of continued operation 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 these 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.1705.B.3, on the date first written above.

WITNESSES:

_____

_____

GRANTOR:

_____

By:_____

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

C. Conditions for Forfeiture. The secretary or his designee may enter an order requiring forfeiture of all or part of the financial security if he determines that:

1. the continued operation or lack of operation and maintenance of the facility covered by this Section represents a threat to public health, welfare, or the environment because the permittee is unable or unwilling to adequately operate and maintain the facility or the facility has been actually or effectively abandoned by the permittee. Evidence justifying such determination includes, but is not limited to:

a. the discharge of pollutants or the land application of biosolids exceeding limitations imposed by applicable permits;

b. the failure to utilize or maintain adequate disinfection facilities for privately-owned sewage treatment facilities;

c. failure to correct overflows or backups from the collection system for privately-owned sewage treatment facilities;

d. a declaration of a public health emergency by the state health officer; and

e. a determination by the Public Service Commission that a permitted privately-owned sewage treatment facility is financially unable to properly operate or maintain the system;

2. reasonable and practical efforts under the circumstances have been made to obtain corrective actions from the permittee; and

3. it does not appear that corrective actions can or will be taken within an appropriate time as determined by the secretary.

D. Use of Proceeds. The proceeds of any forfeiture shall be used by the secretary, or by any receiver appointed by a court under R.S. 30:2075.3, to address or correct the deficiencies at the facility or to maintain and operate the system, as deemed necessary by the secretary under Subsection C of this Section.

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 34:

§1707. Liability Insurance Requirements for Commercial Preparers of Sewage Sludge, Commercial Land Appliers of Biosolids, and Centralized Waste Treatment Facilities That Treat E&P Waste

A. Commercial preparers of sewage sludge, commercial land appliers of biosolids, and CWTs that treat E&P waste, hereinafter referred to in this Section as *affected persons*, have the following financial responsibilities while their facilities are in operation.

1. All affected persons 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. Commercial preparers of sewage sludge and commercial land appliers of biosolids are exempt from these requirements 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. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the following mechanisms.

a. Insurance. Evidence of liability insurance may consist of either a signed duplicate original of a liability endorsement in favor of the affected person, or a certificate of insurance. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.1799.Appendix A, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.1799.Appendix B, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. 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.1.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 Subparagraphs A.1.b-d 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. Letter of Credit. An affected person may satisfy the requirements of this Subsection by obtaining an irrevocable letter of credit that conforms to all of 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. The affected person 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 agreement shall be identical to the wording in LAC 33:IX.1799.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.1799.Appendix D.

iii. The letter of credit must be accompanied by a letter from the affected person 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, if applicable;

(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 affected person 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 affected person 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.1799.Appendix C, except that the instructions in brackets are to be replaced with the relevant information (i.e., type of affected person), and the brackets deleted.

c. Financial Test

i. To meet this test, the affected person or parent corporation (corporate guarantor) of the affected person must submit to the Office of Environmental Services the documents required by LAC 33:IX.1709.C.8 demonstrating that the requirements of LAC 33:IX.1709.C.8 have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the affected person or parent corporation (corporate guarantor). If the affected person or parent corporation is using the financial test to demonstrate liability coverage and closure, only one letter from the chief financial officer is required.

ii. The assets of the parent corporation of the affected person shall not be used to determine whether the affected person satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subparagraph A.1.d of this Section.

iii. The wording of the financial test shall be as specified in LAC 33:IX.1709.C.8.d.

d. Corporate Guarantee

i. An affected person may meet the requirements of Paragraph A.1 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 LAC 33:IX.1709.C.8.b and d. 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 LAC 33:IX.1709.C.8;

(b). the guarantor is the parent corporation of the affected person to be covered by the guarantee, and the guarantee extends to certain facilities;

(c). if the affected person 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 affected person, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the affected person, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the affected person 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, he or she shall establish alternate financial assurance as specified in this Subsection

in the name of the affected person unless the affected person 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 affected person in accordance with these regulations;

(h). the guarantor agrees to remain bound under the guarantee for as long as the affected person must comply with the applicable financial assurance requirements of LAC 33:IX.1709.C for the facilities covered by the guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the affected person. Such cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts;

(i). the guarantor agrees that if the affected person 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 affected person;

(j). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the affected person. The guarantor also expressly waives notice of amendments or modifications of the facility permit; and

(k). the wording of the corporate guarantee shall be as specified in LAC 33:IX.1709.C.8.i.

ii. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general or insurance commissioner 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.

2. The use of a particular financial assurance mechanism is subject to the approval of the administrative authority.

3. Affected persons 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.

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 34:

§1709. Financial Assurance for Closure for Commercial Preparers of Sewage Sludge, Commercial Land Appliers of Biosolids, and CWTs That Treat E&P Waste

A. This Section applies only to commercial preparers of sewage sludge, commercial land appliers of biosolids, and CWTs that treat E&P waste, hereinafter referred to in this Section as *affected persons*. All submittals shall be in accordance with the instructions in LAC 33:IX.1701.D.

B. Commercial preparers of sewage sludge and commercial land appliers of biosolids shall maintain financial assurance in the amount of $25,000 per site for closure 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. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the methods in Paragraph C.2 of this Section. 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.

C. All affected persons, except as specified in Subsection B of this Section, shall establish and maintain financial assurance for closure in accordance with LAC 33:IX.715.J and 7305.C.4, and shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure in accordance with the following requirements.

1. The affected person must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these regulations. 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.

a. 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 re-estimation of the closure costs in accordance with Paragraph C.1 of this Section. The affected person must revise the cost estimate whenever a change in the closure plan increases or decreases the cost of the closure plan. The affected person must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

b. For trust funds, the first payment must be at least equal to the current 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 cost estimate 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 Instruments. The financial assurance instrument 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 closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

b. An affected person 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 mechanisms must equal the total of the current closure cost estimate for each facility covered.

d. When all closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanisms.

3. Trust Funds. An affected person 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 affected person 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 affected person.

e. The affected person 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. However, the affected person must 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 Subparagraph C.1.b of this Section.

f. If the affected person establishes a trust fund after having used one or more of the alternate instruments specified in this Section, the 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 Subparagraph C.1.b of this Section.

g. After the pay-in period is completed, whenever the current cost estimate changes, the affected person 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 affected person, 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 cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

h. After beginning final closure, an affected person or any other person authorized by the affected person to perform closure may request reimbursement for 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 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 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 affected person 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.1799.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.1799.Appendix D.

4. Surety Bonds. An affected person 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 affected person 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 agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.1799.Appendix D.

c. The bond must guarantee that the affected person 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 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 affected person and the administrative authority of a notice of cancellation of the bond from the surety.

d. The terms of the bond must provide that the surety will become liable on the bond obligation when the affected person fails to perform as guaranteed by the bond.

e. The penal sum of the bond must be at least equal to the current closure cost estimate.

f. Whenever the current cost estimate increases to an amount greater than the penal sum, the affected person, 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 cost 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 affected person and to the Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the affected person 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.1799.Appendix E, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

5. Performance Bonds. An affected person 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 affected person 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 agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.1799.Appendix D.

c. The bond must guarantee that the affected person will:

i. perform final 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 affected person and the administrative authority receive notice of cancellation of the bond from the surety.

d. The terms of the bond must provide that the surety will become liable on the bond obligation when the affected person fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the affected person has failed to perform final 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 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 cost estimate.

f. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the affected person, 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 cost estimate 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 affected person and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed, beginning on the date that both the affected person 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.1799.Appendix F, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

6. Letter of Credit. An affected person 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. The affected person 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 agreement shall be identical to the wording in LAC 33:IX.1799.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.1799.Appendix D.

c. The letter of credit must be accompanied by a letter from the affected person 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, if applicable;

iii. the facility name;

iv. the facility permit number; and

v. the amount of funds assured for 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 affected person and the 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 affected person 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 cost estimate.

f. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the affected person, 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 cost estimate 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 cost estimate upon written approval of the administrative authority.

g. Following a determination by the administrative authority that the affected person has failed to perform final 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.1799.Appendix G, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

7. Insurance. An affected person 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 cost estimate.

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. 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, an affected person or any other person authorized by the affected person to perform closure may request reimbursement for 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 affected person must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the affected person.

g. Each policy must contain a provision allowing assignment of the policy to a successor of an affected person. 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 affected person 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 affected person have received the 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 is ordered;

iv. the affected person 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 affected person, within 60 days after the increase, must either increase the face amount to at least equal to the current closure cost estimate 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 cost estimate 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.1799.Appendix H, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

8. Financial Test. An affected person or a parent corporation of the affected person, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that a financial test as specified in this Paragraph is met. The assets of the parent

corporation of the affected person shall not be used to determine whether the affected person satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in LAC 33:IX.1707.A.1.d and/or Subparagraph C.8.i of this Section.

a. To pass this test, the affected person or parent corporation of the affected person must meet either of the following criteria:

i. the affected person or parent corporation of the affected person has:

(a). tangible net worth of at least six times the sum of the current closure cost estimate 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 its total assets, or at least six times the sum of the current closure cost estimate, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

ii. the affected person or parent corporation of the affected person has:

(a). a current rating for its 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 its total assets or at least six times the sum of the current closure cost estimate, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

b. To demonstrate that this test is met, the affected person or parent corporation of the affected person must submit the following three items to the Office of Environmental Services:

i. a letter signed by the chief financial officer of the affected person or parent corporation demonstrating and certifying the criteria in Subparagraph C.8.a of this Section and including the information required by Subparagraph C.8.d of this Section. If the financial test is provided to demonstrate both assurance for closure and liability coverage, a single letter to cover both forms of financial assurance is required;

ii. a copy of the report of the independent certified public accountant (CPA) on the financial statements of the affected person or parent corporation of the affected person for the latest completed fiscal year; and

iii. a special report from the independent CPA to the affected person or parent corporation of the affected person 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) or affected person. The affected person 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 affected person or parent corporation (if a corporate guarantor) of the affected person 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.1799.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 facilities, whether in the state of Louisiana or not, owned or operated by the affected person 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 facilities, whether in the state of Louisiana or not, owned or operated by the affected person, for which financial assurance for closure is demonstrated through the use of a financial test or self-insurance by the affected person, including the cost estimates for the closure of each facility;

iii. a list of the 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 is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure for each facility and the amount of annual aggregate liability coverage for each facility; and

iv. a list of facilities, whether in the state of Louisiana or not, for which financial assurance for closure is not demonstrated through the financial test, self-insurance, or other substantially equivalent state instruments, including the estimated cost of 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 cost estimate*, as used in Subparagraph C.8.a of this Section, includes the cost estimate required to be shown in Subclause C.8.a.i.(a) of this Section.

g. After initial submission of the items specified in Subparagraph C.8.b of this Section, the affected person or parent corporation of the affected person 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 C.8.b of this Section.

h. The administrative authority may, on the basis of a reasonable belief that the affected person or parent corporation of the affected person may no longer meet the requirements of this Paragraph, require reports of financial

condition at any time in addition to those specified in Subparagraph C.8.b of this Section. If the administrative authority finds, on the basis of such reports or other information, that the affected person or parent corporation of the affected person no longer meets the requirements of Subparagraph C.8.b of this Section, the affected person or parent corporation of the affected person must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

i. An affected person may meet the requirements of this Paragraph for closure by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must be the parent corporation of the affected person. The guarantor must meet the requirements and submit all information required for affected persons in Subparagraphs C.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 C.8.b and d of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:IX.1799.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 Subparagraphs C.8.b and d of this Section;

ii. the guarantor is the parent corporation of the affected person of the facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

iii. *closure plans*, as used in the guarantee, refers to the plans maintained as required by the state of Louisiana regulations for the closure of facilities, as identified in the guarantee;

iv. for value received from the affected person, the guarantor guarantees to the Office of Environmental Services that the affected person will perform closure 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 affected person fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Paragraph C.3 of this Section, in the name of the affected person, in the amount of the current closure cost estimate or as specified in Subparagraph C.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 affected person that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the affected person, and that within 120 days after the end of such fiscal year, the guarantor will establish such financial assurance unless the affected person 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 the guarantor is disallowed from continuing as a guarantor of closure, the guarantor will establish alternate financial assurance as specified in this Subsection in the name of the affected person, unless the affected person 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 any other modification or alteration of an obligation of the affected person in accordance with these regulations;

ix. the guarantor agrees to remain bound under the guarantee for as long as the affected person must comply with the applicable financial assurance requirements of this Subsection for the facilities covered by the corporate guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the affected person. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts;

x. the guarantor agrees that if the affected person 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 affected person; and

xi. the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the affected person. The guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit.

9. Local Government Financial Test. An affected person that is a local government and that satisfies the requirements of Subparagraphs C.9.a-c of this Section may demonstrate financial assurance up to the amount specified in Subparagraph C.9.d of this Section.

a. Financial Component

i. The affected person must satisfy the following conditions, as applicable:

(a). if the affected person 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 affected person must have a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05 and a ratio of annual debt service to total expenditures less than or equal to 0.20 based on the affected person's most recent audited annual financial statement.

ii. The affected person must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have the 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 this Paragraph 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 C.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 Paragraph 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 affected person must place a reference to the closure 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 requirements, the reported liability at the balance sheet date, the estimated total closure cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For 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 affected person 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 C.9.d of this Section. It must provide evidence that the local government meets the conditions of Clauses C.9.a.i-iii of this Section, and certify that the local government meets the conditions of Clauses C.9.a.i-iii and Subparagraphs C.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 C.9.a.i.(b) of this Section, if applicable, and the requirements of Clause C.9.a.ii and Subclauses C.9.a.iii.(c)-(d) of this Section. The report by the certified public accountant or state agency should state the procedures performed and the findings of the certified public accountant or state agency; and

(d). a copy of the comprehensive annual financial report (CAFR) used to comply with Subparagraph C.9.b of this Section (evidence that the requirements of *General Accounting Standards Board Statement 18* have been met).

ii. The items required in Clause C.9.c.i of this Section must be placed in the facility operating record, in the case of closure, 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 affected person must update the information and place the updated information in the operating record within 180 days following the close of the affected person's fiscal year.

iv. The local government affected person is no longer required to meet the requirements of Clause C.9.c.iii of this Section when:

(a). the affected person substitutes alternate financial assurance, as specified in this Section; or

(b). the affected person is released from the requirement of maintaining financial assurance in accordance with 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 affected person no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the its fiscal year, obtain alternate 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 affected person 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 affected person 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 affected person 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 and corrective action costs that a local government affected person can assure under Paragraph C.9 of this Section is determined as follows:

i. if the local government affected person does not assure other environmental obligations through a financial test, it may assure 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 underground injection control (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, or hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or any applicable corresponding state programs, it must add those costs to the closure and corrective action costs it seeks to assure under this Paragraph, and the total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

iii. the affected person must obtain an alternate financial assurance instrument for those costs that exceed the limits set in this Subparagraph.

10. Local Government Guarantee. An affected person may demonstrate financial assurance for closure, as required by 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 C.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. The guarantee must provide that:

i. if the affected person fails to perform closure of a facility covered by the guarantee, the guarantor will:

(a). perform closure, or pay a third party to perform closure; or

(b). establish a fully funded trust fund as specified in Paragraph B.3 of this Section in the name of the affected person; and

ii. the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the affected person 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 affected person and the administrative authority, as evidenced by the return receipts. If a guarantee is canceled, the affected person must, within 90 days following receipt of the cancellation notice by the affected person 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 affected person 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 affected person must place a certified copy of the guarantee, along with the items required under Subparagraph C.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.

ii. The affected person is no longer required to maintain the items specified in Clause C.10.b.i of this Section when:

(a). the affected person substitutes alternate financial assurance as specified in this Section; or

(b). the affected person is released from the requirement of maintaining financial assurance in accordance with this Section.

iii. If a local government guarantor no longer meets the requirements of Paragraph C.9 of this Section, the affected person 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 affected person 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 Instruments. An affected person may demonstrate financial assurance for closure and corrective action, as required by this Section, by establishing more than one financial mechanism per facility, except that instruments guaranteeing performance, rather than payment, may not be combined with other instruments. The instruments must be as specified in Paragraphs C.3-8 of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure and/or corrective action may be provided by a combination of instruments, rather than a single mechanism.

12. Discounting. The administrative authority may allow discounting of 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 affected person 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 affected person certifies that there are no foreseeable factors that will change the estimate of site life; and

d. discounted cost estimates are adjusted annually to reflect inflation and years of remaining life.

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 34:

§1711. Incapacity of Owners or Operators, Guarantors, or Financial Institutions

A. All persons subject to this Chapter must notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the person as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in LAC 33:IX.1707.A.1.d or 1709.C.8.i must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee set forth in LAC 33:IX.1799.Appendix J.

B. A person who fulfills the requirements of LAC 33:IX.1707 or 1709 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The person must establish other financial assurance or liability coverage within 60 days after such an event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

§1799. Financial Assurances Documents—Appendices A, B, C, D, E, F, G, H, I, and J

NOTE: Within this Section, *affected person* means an owner or operator of a centralized waste treatment facility (CWT) that treats exploration and production (E&P) waste, a commercial preparer of sewage sludge, or a commercial land applier of biosolids, as applicable.

A. Appendix A—Liability Endorsement

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

LIABILITY ENDORSEMENT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
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 the affected person or the operator. (Note: The operator will provide the liability-insurance documentation only when the affected person is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial assurance is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.1701.A. The coverage applies at [list 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.1707.A.1.b-d.

(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] of [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.1799.Appendix A, effective 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]

B. Appendix B—Certificate of Insurance

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

CERTIFICATE OF LIABILITY INSURANCE

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
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 affected person or the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial assurance under *Louisiana Administrative Code* (LAC), Title 33, Part IX.1701.A. 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.1707.A.1.b-d.

(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.1799.Appendix B, 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

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [affected person'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 [affected person's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to operations by the affected person at [site location(s)] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.1701.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 affected person] 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 affected person] 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 affected person] 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.1799.Appendix C, 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

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

TRUST AGREEMENT/STANDBY TRUST AGREEMENT

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

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the Grantor, requiring that an affected person shall provide assurance that funds will be available when needed for closure 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 affected person 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 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 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 or 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] 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.1799.Appendix D, on the date first written above.

WITNESSES:
_____
_____

GRANTOR:
_____
By:_____
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

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

FINANCIAL GUARANTEE BOND

Date bond was executed:_____
Effective date:_____
Principal: [legal name and business address of affected person]
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 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 [insert type of permit] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure, 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.1709.C.4.b, 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.1707 or 1709 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.1709.C.4.f and the conditions of the permit so that it guarantees a new 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.1799.Appendix E, 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

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

PERFORMANCE BOND

Date bond was executed:_____
Effective date:_____
Principal: [legal name and business address of affected person]
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 amount(s) for each facility guaranteed by this bond (indicate 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 [insert type of permit] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure, 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;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.1709 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 failed to provide alternate financial assurance, as specified in LAC 33:IX.1709.C.5.c.ii, 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.1709.C.4.f and the conditions of the permit so that it guarantees a new 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.1799.Appendix F, 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

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE,"or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
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 [affected person's name and address] for the 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 affected person] 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 affected person], 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 affected person] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the [insert "the most recent edition 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.1799.Appendix G, 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

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

CERTIFICATE OF INSURANCE FOR CLOSURE

Name and Address of Insurer: _____
(hereinafter called the "Insurer")
Name and Address of Insured: _____
(hereinafter called the "Insured")
(Note: Insured must be the affected person.)
Facilities covered:
[list agency interest number, site name, facility name, facility permit number, address, and amount of insurance for closure]
(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 closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.1707.A.1.a or 1709.C.7, 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.1799.Appendix H, 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

[Insert, as applicable:
"CENTRALIZED WASTE TREATMENT FACILITY,"
"COMMERCIAL PREPARER OF SEWAGE SLUDGE," or
"COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

LETTER FROM THE CHIEF FINANCIAL OFFICER
(LIABILITY COVERAGE, CLOSURE)

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the affected person or parent corporation of the affected person]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for [insert "liability coverage," and/or "closure," as applicable] as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.[insert "1707.A.1.c", "1709.C.8", or "1707.A.1.c and 1709.C.8"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and 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 "affected person," or "parent corporation of the affected person"], whether in the State of Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.1707.A.1.c. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "affected person" or "parent corporation of the affected person"], whether in the State of Louisiana or not, for which financial assurance for closure, is demonstrated through a financial test similar to that specified in LAC 33:IX.1709.C.8 or other forms of self-insurance. The current 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 "1707.A.1.d", "1709.C.8.i", or "1707.A.1.d and 1709.C.8.i"], [insert "liability coverage," and/or "closure,"], whether in the State of Louisiana or not, of which [insert the name of the affected person] 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 so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following facilities, whether in the State of Louisiana or not, for which financial assurance for liability coverage and/or closure 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.1707 and/or 1709. The current 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.1709.C.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.1709.C.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.]

PART B. CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.1709.C.8.a.i are used.]

Alternative I		
1. Sum of current closure cost estimates (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?	___	___

Alternative I		
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.1709.C.8.a.ii are used.]

Alternative II		
1. Sum of current 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	_____	
*5. Tangible net worth (If any portion of the 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 and/or closure.]

PART C. LIABILITY COVERAGE AND/OR CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.1709.C.8.a.i are used.]

Alternative I		
1. Sum of current 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 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.1709.C.8.a.ii are used.]

Alternative II		
1. Sum of current 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 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?	___	___
*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.1799.Appendix I.

[Signature of chief financial officer for the firm]
[Typed name of chief financial officer]
[Title]
[Date]

J. Appendix J—Corporate Guarantee

[Insert, as applicable: "CENTRALIZED WASTE TREATMENT FACILITY," "COMMERCIAL PREPARER OF SEWAGE SLUDGE," or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

CORPORATE GUARANTEE FOR
LIABILITY COVERAGE AND/OR CLOSURE

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 affected person] 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.1707.A.1.d and/or 1709.C.8.i.

(B). [Subsidiary] is the affected person 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 and/or closure and the amount of annual aggregate liability coverage and/or closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.7305.C.3, for the closure of the facility identified in Paragraph (B) above.

(D). For value received from the affected person, guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that the affected person fails to perform closure 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.1709.C.3, as applicable, in the name of the affected person in the amount of the current closure estimates as specified in LAC 33:IX.1709.C.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from the affected person, 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 the affected person 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 the affected person that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"], as applicable, in the name of the affected person. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the affected person 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" and/or "closure "] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"], as applicable, in the name of the affected person unless the affected person 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, insert "amendment or modification of the closure plan, the extension or reduction of the time of performance of closure, or "] any other modification or alteration of an obligation of the affected person pursuant to LAC 33:IX.7305.C.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the affected person must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"] 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 affected person, such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts.

(K). The guarantor agrees that if the affected person fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.1707" and/or "LAC 33:IX.1709"], 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 affected person.

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the affected person. Guarantor expressly waives notice of amendments or modifications of the 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.1799.Appendix J, 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 34:

Chapter 19. State of Louisiana Stream Control Commission—Repealed

§1901. Order

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1435.

HISTORICAL NOTE: Adopted by the Department of Wildlife and Fisheries, Office of Coastal and Marine Resources on July l, 1968, repealed by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 23. Definitions and General LPDES Program Requirements

§2313. Definitions

A. The following definitions apply to LAC 33:IX.Chapters 23, 25, 27, 29, 31, 33, and 35. Terms not defined in this Section have the meaning given by the CWA.

* * *

Boiler Blowdown—discharge from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

* * *

Composite Sample—a sample consisting of a minimum of eight grab samples of effluent collected at regular intervals over a normal operating day and combined in proportion to flow, or a sample continuously collected in proportion to flow over a 24-hour period.

* * *

Noncontact Cooling Water—water that is used to remove heat and which does not come into direct contact with any raw material, or intermediate or finished product.

* * *

Sanitary Waste—treated or untreated wastewaters that contain human metabolic wastes.

* * *

Territorial Seas—the belt of the seas measured from the line of ordinary low water along that portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles (as defined at 33 U.S.C. 1362.8).

* * *

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 33:2365 (November 2007), LR 34:

Chapter 25. Permit Application and Special LPDES Program Requirements

§2501. Application for a Permit

A. Duty to Apply

1. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503, and who does not have an effective permit, except persons covered by general permits under LAC 33:IX.2515, or discharges excluded under LAC 33:IX.2315, or a user of a privately owned treatment works unless the state administrative authority requires otherwise under LAC 33:IX.2707.M, must submit a complete application to the Office of Environmental Services in accordance with this Section and LAC 33:IX.Chapters 31, 33, and 35. All concentrated animal feeding operations have a duty to seek coverage under an LPDES permit as described in LAC 33:IX.2505.D. In addition to the application requirements contained in this Chapter, *centralized waste treatment facilities*, as defined in LAC 33:IX:4903, that receive exploration and production waste shall also comply with the requirements of LAC 33:IX.715.

A.2. - O.Editorial Note. ...

P. Additional Requirements for Privately-Owned Sewage Treatment Facilities Regulated by the Public Service Commission. Privately-owned sewage treatment facilities regulated by the Public Service Commission must also comply with the financial security requirements in LAC 33:IX.Chapter 17. Following receipt of the permit application the administrative authority shall calculate and subsequently notify the applicant of the "waste discharge capacity per day" for the facility. The applicant shall use this figure to determine the amount of the financial security required by LAC 33:IX.Chapter 17. The applicant shall subsequently obtain and supply the department with the financial security document in accordance with LAC 33:IX.Chapter 17. No permit shall be issued after July 1, 1999, without the required financial security, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

Q. - R.5.b. …

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 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:229 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:2069, 2165 (October 2007), LR 33:2360 (November 2007), LR 34:

Chapter 29. Transfer, Modification, Revocation and Reissuance, and Termination of LPDES Permits

§2903. Modification or Revocation and Reissuance of Permits

A. - A.2.b. ...

3. Upon modification or revocation and reissuance of a permit for a privately-owned sewage treatment facility regulated by the Public Service Commission, the permittee shall comply with the financial security requirements in LAC 33:IX.Chapter 17, unless a waiver or exemption has been granted under R.S. 30:2075.2(A)(6).

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 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2283 (October 2000), LR 27:45 (January 2001), LR 28:470 (March 2002), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431 (October 2005), LR 32:1033 (June 2006), LR 34:

Chapter 65. Additional Requirements Applicable to the LPDES Program

§6509. Additional Requirements for Permit Renewal and Termination

A. - A.3. …

4. failure to provide or maintain financial security in accordance with LAC 33:IX.Chapter 17.

B. - D. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 67. Financial Security—Repealed

§6701. Applicability

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:

§6703. Acceptable Form of Financial Security

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001),

repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2515 (October 2005), repealed LR 34:

§6705. Amount of Required Financial Security

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:48 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:

§6707. Conditions for Forfeiture

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:48 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:

§6709. Use of Proceeds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Sections 2074(B)(3) and (4) and 2075.2 and 3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:49 (January 2001), repromulgated LR 30:233 (February 2004), repealed by the Office of the Secretary, Legal Affairs Division, LR 34:

Subpart 3. Louisiana Sewage Sludge and Biosolids Program

Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids

Subchapter A. Program Requirements

§7305. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge

A. - C.3.d.iii. …

4. The financial assurance requirements for commercial prepares of sewage sludge and commercial land appliers of biosolids are as indicated in LAC 33:IX.Chapter 17.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2382 (November 2007), LR 34:

§7307. Financial Assurance Requirements for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2386 (November 2007), repealed LR 34:

Subchapter B. Appendices

§7395. Financial Assurances Documents—Appendices A, B, C, D, E, F, G, H, I, and J

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(1)(c), (B)(3), and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:2409 (November 2007), repealed LR 34:

Part XV. Radiation Protection

Chapter 14. Regulation and Licensing of Naturally Occurring Radioactive Material (NORM)

§1404. Exemptions

A. - H.5.…

I. Produced waters from crude oil and natural gas production are exempt from the requirements of these regulations if the produced waters are reinjected into a well approved by the agency having jurisdiction to regulate such injection or if the produced waters are discharged under the authority of the agency having jurisdiction to regulate such discharge and such discharges comply with the applicable regulations of LAC 33:IX.Chapter 7 and of LAC 33:XV.Chapters 4 and 14.

J. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Nuclear Energy Division, LR 15:736 (September 1989), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:605 (June 1992), LR 21:25 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2599 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:

Herman Robinson, CPM
Executive Counsel

0806#018

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_x) Trading Programs SIP Revision (0806Pot1)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, is proposing a revision to the Louisiana air quality State Implementation Plan (SIP). The proposed revision to the SIP contains the revisions to the Clean Air Interstate Rule (CAIR) nitrogen oxide (NO_x) trading programs allocation methodology rule. Following the promulgation of CAIR, EPA promulgated a Federal Implementation Plan (FIP) for the rule on April 28, 2006.

The FIP became effective on June 27, 2006. The FIP gives limited flexibility in implementation of certain federal rule provisions related to CAIR and provides states with an option to submit an abbreviated SIP. Louisiana submitted an abbreviated SIP for the Annual and Ozone Season allowance allocations method on August 20, 2007, and it was approved by EPA on September 28, 2007, in the *Federal Register* at 72 FR 55064. Louisiana will remain under the other provisions of the FIP for the Annual and Ozone Season NO_x Trading Programs.

On March 20, 2008, the department proposed revisions to the CAIR NO_x Trading Programs allocation methodology rule (AQ292) in the *Louisiana Register*. This rule updates certain citations to all federal revisions to the CAIR; revises and adds definitions, adds provisions for petroleum coke-fired electricity generation units (EGUs) and reclassification of units from utility to non-utility and vice versa; and adds language to cease allocation of NO_x allowances to certified units that aren't built. The state provisions in the rule will be in lieu of 40 CFR 96, Subpart EE – CAIR NO_x Allowance Allocations (§96.141 and §96.142) and Subpart EEEE – CAIR NO_x Ozone Season Allowance Allocations (§96.341 and §96.342). Upon final promulgation, AQ292 will be submitted to EPA as a revision to the Louisiana SIP. The submittal of an approvable abbreviated SIP revision of the CAIR Annual and Ozone Season NO_x Trading Programs satisfies Louisiana's obligation under Section 110(a)(2)(D)(i) of the Clean Air Act (CAA).

The public hearing for the revision to the SIP will be held on July 29, 2008, 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 SIP revisions. Should individuals with a disability need an accommodation in order to participate, contact Vivian H. Aucoin, at (225) 219-3575 at the address given below. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Interested persons are invited to submit written comments concerning the proposed CAIR abbreviated SIP revision no later than 4:30 p.m., August 5, 2008. Comments should be sent to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or FAX to (225) 219-3582 or by e-mail to vivian.aucoin@la.gov. The proposed SIP revisions are available on the Internet at www.deq.louisiana.gov/portal/tabid/2381/Default.aspx under Louisiana SIP Revisions.

A copy of the proposed SIP revision may be viewed at the following DEQ office locations from 8 a.m. to 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

0806#017

POTPOURRI

Department of Health and Hospitals
Office of Public Health

Public Hearing—Preventive Health
and Health Services Block Grant

The Department of Health and Hospitals, Office of Public Health, will hold a public hearing to receive input from the public on the Louisiana Preventive Health Services Block Grant as administered by the agency. The attached public hearing wil take place on July 21, 2008 beginning at 2 p.m. at 628 North Fourth Street (Bienville Building), 3rd Floor, Room 372, Baton Rouge, LA 70802. Copies of the grant may be obtained from Avis Richard-Griffin, Policy Planning and Evaluation, Office of Public Health. Ms. Richard-Griffin can be contacted by email at agiffin@dhh.la.gov or by telephone at (225) 342-9355 for additional information. percent.

Alan Levine
Secretary

0806#040

POTPOURRI

Department of Insurance
Office of Health

Annual HIPAA Assessment Rate

Pursuant to Louisiana Revised Statutes 22:250.10(D)(2), the annual HIPAA assessment rate has been determined by the Department of Insurance to be .00024 percent.

James J. Donelon
Commissioner

0806#043

POTPOURRI

Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Mermentau Resources, Inc.	Grand Cheniere	L	Waste Disposal Well	1	973548
Arkansas Nat. Gas Co.	Elm Grove	S	Vanhoose (97)	A-1	8339
Carl P. Roppolo, Jr.	Elm Grove	S	M L Johnson	1	165156
D & B Inc.	Wildcat-No La Monroe Dist	M	Louise Gilbert Etal	1	103196
Continental Asphalt &	Wildcat-No La	S	Polly	8	1473

Operator	Field	District	Well Name	Well Number	Serial Number
Petr Co.	Shreveport Dist				
Cuatro Petro Corp.	Tigre Lagoon, South	L	Sl 14203	1	209127 (30)

James H. Welsh
Commissioner

0806#039

POTPOURRI

Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates—Underwater Obstructions

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 12 claims in the amount of $56,891.97 were received for payment during the period May 1, 2008-May 30, 2008.

There were 12 claims paid and 0 claims denied.

Loran Coordinates of reported underwater obstructions are:

894716	293906.4	Plaquemines

Latitude/Longitude Coordinates of reported underwater obstructions are:

2909.514	8927.620	Plaquemines
2915.234	9005.346	Lafourche
2915.390	9005.578	Lafourche
2917.119	8959.251	Jefferson
2917.848	8951.144	Plaquemines
2918.397	8949.645	Jefferson
2936.100	9002.680	Jefferson
2939.158	8932.676	Plaquemines
2941.922	8926.844	St. Bernard
2948.545	8939.200	St. Bernard
2959.487	8953.908	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Scott A. Angelle
Secretary

0806#025

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ER—Emergency Rule
R—Rule
N—Notice of Intent
CR—Committee Report
GR—Governor's Report
L—Legislation
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